

**AMENDMENT AND RESTATEMENT OF THE  
DECLARATION OF TRUST CREATING  
THE ROTARY CLUB OF DEL MAR FOUNDATION TRUST**

THE ROTARY CLUB OF DEL MAR declares:

1. To provide a means for contributors to make charitable gifts that will qualify as charitable contributions for income tax purposes including testamentary dispositions;
2. To afford an equal opportunity to persons of wealth and persons of moderate means, whether they be Rotarians or others, to make their several gifts for benevolent purposes more effective by providing for the management of all of them as an aggregate fund;
3. To provide for the selection of the beneficiaries of such gifts by an impartial committee of persons chosen for their knowledge of the educational, charitable and benevolent needs of the local, national and worldwide community;
4. To provide a means for the accumulation of the principal of such gifts with the initial goal to create a corpus in an amount not less than \$100,000.00.

**NOW, THEREFORE**, in order to accomplish such purposes, the Board of Directors of the Rotary Club of Del Mar hereby makes the following Amendment and Restatement of that original Declaration of Trust dated April 25, 1985 which was Amended and Restated on May 14, 2002:

**A. DESIGNATION OF TRUST**

The Rotary Club of Del Mar (hereinafter referred to as the "Club") as Trustor desires to establish with the persons signing this Declaration of Trust as Trustees a trust to be known as "THE ROTARY CLUB OF DEL MAR FOUNDATION TRUST: ("Trust").

**B. ESTABLISHMENT OF TRUST**

The Trustees shall hold, manage and distribute the money and property transferred to them under this Trust in the manner hereinafter provided. All of such money and property now held, together with all money and property hereinafter received by the Trustees hereunder, shall constitute the Trust estate.

**C. GIFTS TO THE FOUNDATION**

A gift to the Trust may consist of real or personal property.

**D. PURPOSES**

The Trust is organized and shall be operated exclusively for charitable purposes.

**E. IRREVOCABLE**

No power to revoke this Trust shall exist, nor may it be vested in any person, committee, board or organization.

## **F. THE TRUSTEES**

(1) The Board of Trustees shall consist of six members of the Rotary Club of Del Mar, including the incumbent Past President as a non-voting (ex officio) member, who are knowledgeable as to the management and accumulation of investment assets.

(2) The Board of Directors of the Club shall appoint the Trustees and shall fill all vacancies in Trustee membership.

(3) The term of each Trustee shall be three years which terms shall be staggered, and shall end on June 30<sup>th</sup> of a given year.

(4) The Trustees shall accept and hold in trust all property given, conveyed, devised or bequeathed to the Trust, other than that which, in their sole discretion will not properly be available for or best serve the purpose of the Trust, and which they shall have the right to decline to accept. All property of the Trust shall be administered and managed as a whole and as a single Trust.

The Trustees, for record keeping purposes, shall maintain at least three separate categories for the contributions which it receives:

(a) Corpus- funds contributed to the Trust at inception and such additional funds as have been or will be specifically contributed to corpus.

(b) Undesignated- funds contributed to the Trust for other than corpus or Special Projects.

(c) Special Projects- funds contributed for designated charitable projects to include, but not limited to, matching grants. The Trustees may establish, from time to time, such categories of accounts as they deem appropriate.

The Trustees may establish, from time to time, such categories of accounts as they deem appropriate.

The Trustees shall hold regular meetings at such times as they may determine among themselves, and they shall keep complete records of their proceedings. The decision of a majority number of the voting Trustees shall be controlling on any issue (including any disbursement of funds) for decision by the Trustees. The Trustees shall serve without compensation.

(5) In administering the Trust, the Trustees are vested with the following powers, in addition to any now or hereafter conferred by law, affecting the Trust and the Trust estate:

(a) To continue to hold any property and to operate at the risk of the Trust estate and not at the risk of the Trustees, any property or business received in this Trust, as long as they may deem advisable, the profits and losses therefrom to inure or be chargeable to the Trust estate as a whole and not to the Trustees;

(b) To manage, control, sell, convey, exchange, partition, divide, subdivide, improve or repair; to grant options and to sell upon deferred payments; to lease for terms

within or extending beyond the duration of this Trust for any purpose, including exploration for and removal of gas, oil and other minerals; to enter into community oil leases; to create restrictions, easements and other servitude; to compromise, arbitrate or otherwise adjust claims in favor of or against the Trust; to institute, compromise and defend actions and proceedings; to carry such insurance as the Trustees may deem advisable;

(c) To invest and reinvest the principal and income if accumulated, and to purchase or acquire therewith every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, all in a manner conforming with then existing law;

(d) To advance funds to this Trust for any Trust purpose, such advances with interest at current rates to be a first lien on and to be repaid out of principal or income; to reimburse themselves from principal or income for any loss or expense incurred by reason of their ownership or holding of any property in this Trust;

(e) To borrow money for any Trust purpose upon such terms and conditions as the Trustees may seem proper, and to obligate the Trust estate for repayment; to encumber the Trust estate or any of its property by mortgage, deed of trust, pledge or otherwise, using such procedure to consummate the transaction as the Trustees may deem advisable.

(f) To have, respecting securities, all the rights, powers and privileges of an owner, including the power to pay assessments and other sums deemed by the trustees necessary for the protection of the Trust estate; to participate in voting trusts, polling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations, and in collection therewith to deposit securities with and transfer title to any protective or other Committee under such terms as the Trustees may deem advisable; to exercise or sell stock subscription or conversion rights, to accept and retain as an investment any securities or other property received through the exercise of any of the foregoing powers, regardless of any limitations elsewhere in this instrument relative to investments by the Trustee;

(g) Upon any division or partial or final distribution of the Trust estate, to partition, allot and distribute the Trust estate in undivided interest or in kind, or partly in money and partly in kind, at valuations determined by the Trustees, and to sell such property as the Trustees may deem necessary to make division or distribution subject to the provisions of Paragraph E herein. (???)

(h) To budget the estimated annual income and expenses of the Trust and to determine the amount available for distribution to the recipients at the direction of the Committee.

(i) To determine what is principal or income of the Trust estate and apportion and allocate in their discretion receipts and expenses as between these accounts, including, but without limiting the general application of the foregoing, the power to charge in whole or in part against principal, or to amortize out of or charge forthwith

to income, as and to the extent from time to time determined by the Trustees, premiums paid on purchase of bonds or other obligations for the payment of money;

(j) Unless specifically limited, all discretions conferred upon the Trustees shall be absolute, and their exercise conclusive on all persons interested in this Trust. The enumeration of certain powers of the Trustee shall not limit their general powers, the Trustees, subject always to the discharge of their fiduciary obligations, being vested with and having all the rights, powers and privileges which an absolute owner of the same property would have;

(k) To do all and any other acts and things not hereinbefore specified which it may deem advisable, or which changed and varying conditions, laws or circumstances may render necessary or advisable, to the end that the purposes of The Rotary Club of Del Mar Foundation Trust may be consummated;

(l) To enter into any and all settlements, adjustments, or compromises deemed by the Trustees necessary or expedient in order to settle, and to institute or defend all suits or other proceedings necessary to determined, contests or controversies under wills, trust agreements or other instruments or in any manner arising, relating to or affecting property devised or bequeathed or otherwise transferred to this Trust, or the rights or claims of this Trust under such instruments; for such consideration as the Trustees may deem adequate, to convey and transfer, prior or subsequent to distribution to and acceptance thereof by the Trustee, rights and interests, present or in futuro, which may pass to this Trust under wills or other instruments; and in general to do any and all things deemed by the Trustees necessary to protect the interests of this Trust in respect of property and rights or interests therein devised or bequeathed or otherwise transferred to this Trust.

(m) The funds of the Trust determined by the Trustees to be available for distribution from time to time shall be used and applied by the Trustees for the charitable uses and purposes heretofore set forth according to the direction of a majority in number of voting Trustees.

(n) If the Trustees shall direct a distribution of Trust funds which is to be determined by the Board of Directors of the Rotary Club of Del Mar inadvisable or inappropriate, then the Board of Directors of the Rotary Club of Del Mar shall have the uncontrolled discretion to determine the uses and purposes for which the Trust funds shall be distributed, so long as such distribution is not inconsistent with the provisions of this Trust.

(6) The Trustees, save for their own gross neglect or willful default, shall not be liable or responsible for any loss or damage resulting to the Trust estate. The Trustees shall obtain and maintain in force fidelity bonds in such amounts as the Board of Directors of the Club may, from time to time, determine to be appropriate.

(7) The Trustees may seek and act upon advice of counsel, and the opinion of counsel shall be a full protection and justification to the Trustees for anything suffered or done by them in good faith and in accordance with such opinion.

## **G. GENERAL PROVISIONS**

(1) The Trustees shall appoint from time to time a chairperson, secretary, and treasurer to, respectively, organize Trustee activities, keep minutes of Trustee actions and meetings, and maintain the financial records of the Trust.

(2) A statement of receipts and disbursements and financial statement shall be prepared annually by the Trustees and delivered to the Club on or before August 15th of each year. Costs in connection therewith shall be charged to the income and/or principal of the Trust.

(3) The Trustees and the Board of Directors of the Club shall at all reasonable times have the right to inspect the books, vouchers, records, securities and investments of the Trustees in any way pertaining to the Foundation, and any expense in connection with such inspection shall be chargeable against the income and/or principal of the Trust estate. The Board of Directors of the Club as well as the Attorney General of the State of California, shall have the right to institute proceedings in any court of competent jurisdiction, to restrain, correct or recover for maladministration of the Trust estate by the Trustees, or of the abuse of the powers of the Trustees.

(4) Any Trustee shall have the right to resign at any time, and may be removed at any time by the Board of Directors of the Club, which Board shall have the power, in the event of any such resignation or removal, to appoint a successor. If the Board of Directors shall fail, upon the resignation or removal of a Trustee, to appoint a successor, a successor shall be appointed by a court of competent jurisdiction upon petition of the resigning persons or of any person interested in the Trust.

(5) The Trustee shall pay out of principal or income as they may elect, or partially out of each in such shares as they may determine, property taxes, assessments, charges, attorney's fees, and other expenses incurred in the administration or protection of this Trust. The discretion of the Trustees to pay these items from income or principal, or partially from each, may be exercised not only in the interest of the Trust estate but for the benefit of any beneficiary. The income remaining after such expenditures as the Trustee shall elect to pay therefrom shall constitute net income.

(6) The Club, by resolution of its Board of Directors, and by written instrument filed with the Trustees, and with the written consent of the Trustees, may amend this Trust in any respect not inconsistent with its general objectives herein expressed, and may cancel or amend any such amendment. No such amendment, however, shall make this Trust revocable, nor vest the powers to remove the Trust in any person or persons.

(7) If any provision of this instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

(8) This Trust has been accepted by the Trustees in the State of California and unless otherwise provided in this instrument, its validity construction and all rights under it shall be governed by the laws of that State.

This Amendment and Restatement to the Declaration of Trust Creating The Rotary Club of Del Mar Foundation Trust, having been approved by resolution of the Rotary Club of Del Mar, is executed this 21st day of September, 2012.

**THE ROTARY CLUB OF DEL MAR**

Valerie Myers  
By:

Its: President

Peggy Martin  
By:

Its: Secretary

The foregoing Amendment and Restatement of Trust is hereby consented to on this 15 day of NOVEMBER, 2012.

**TRUSTEES:**

William Dougherty  
William Dougherty

Walt Strangman  
Walt Strangman

Dee House  
Dee House

John Sorensen  
John Sorensen

Robert Fuchs  
Robert Fuchs