

UNITED STATES NAVAL ACADEMY FOUNDATION, INC.

**AMENDED AND RESTATED
RESTRICTED GIFT AGREEMENT FOR THE
CLASS OF 1963 CENTER FOR ACADEMIC EXCELLENCE**

THIS AMENDED AND RESTATED RESTRICTED GIFT AGREEMENT (this "AGREEMENT") is made this ____ day of _____ 2015 by and between the UNITED STATES NAVAL ACADEMY CLASS OF 1963, an unincorporated association ("the CLASS"), the UNITED STATES NAVAL ACADEMY CLASS OF 1963 FOUNDATION, INC., a Maryland non-stock corporation, and a 501(c)(3) organization as defined in the United States Internal Revenue Code (the "1963 FOUNDATION"), and the UNITED STATES NAVAL ACADEMY FOUNDATION, INC., a Maryland non-stock corporation and a 501(c)(3) organization as defined in the United States Internal Revenue Code ("the USNA FOUNDATION"). Together, the CLASS, the 1963 FOUNDATION, and the USNA FOUNDATION shall be referred to as "the PARTIES."

RECITALS

WHEREAS, the CLASS and the 1963 FOUNDATION have, over the years, raised private gift funds to support legacy gifts, including the Class of 1963 Center for Academic Excellence (the "'63 CAE"), at or for the benefit of the United States Naval Academy; and

WHEREAS, the CLASS and the 1963 FOUNDATION donated the aforesaid private gift funds to the USNA FOUNDATION to be deposited by the USNA FOUNDATION into account number 656300, an account under the control of the USNA FOUNDATION (the "FUND"); and

WHEREAS, over the years, the PARTIES have documented their agreements and understandings concerning the purposes to which the FUND was to be devoted through a series of signed writings as follows: (i) a 9 August 2000 "Letter Agreement," (ii) an 18 September 2003 "Gift Agreement," (iii) a 7 May 2007 "Amendment #1 to Gift Agreement [Dated] 18 September 2003," (iv) a 6 March 2008 "Memorandum of Understanding," and (v) a 24 September 2012 "Amendment #2 to Gift Agreement [Dated] 18 September 2003" (collectively, the "PRIOR AGREEMENTS"); and

WHEREAS, the PARTIES do, by this AGREEMENT, intend to memorialize the 1963 FOUNDATION's transfer, assignment, and relinquishment of all its rights and interests in the FUND to the CLASS, and, as well, to combine, update, and harmonize the terms of the PRIOR AGREEMENTS into a single document reflecting the current intentions of the PARTIES with respect to the FUND.

NOW THEREFORE, in consideration of the above recitals and the mutual covenants herein, the PARTIES agree as follows:

- 1. Prior Agreements Merged.** The PARTIES do hereby affirm that this AGREEMENT represents and memorializes all of their current agreements and understandings with regard to the FUND, and that, except as expressly specified below, the PRIOR AGREEMENTS are hereby deemed cancelled, merged, and superseded.

2. **Relinquishment of Rights and Responsibilities.** By the signature of its authorized representative set forth below, the 1963 FOUNDATION does hereby assign, transfer, and set over to the CLASS all of its right, title, and interest in and to the FUND, and the CLASS does hereby accept such transfer from the 1963 FOUNDATION, along with all legal duties and obligations attendant therewith. The PARTIES agree that as of the date of the 1963 FOUNDATION's transfer of its rights and responsibilities in the FUND to the CLASS, the FUND has a balance of \$_____.
3. **Purpose of the Fund.** The CLASS desires that the FUND be used solely to support the '63 CAE (the "INTENDED PURPOSE"). The CLASS recognizes that the U. S. Naval Academy (the "ACADEMY") will benefit from being accorded latitude in determining how and when to draw sums for the INTENDED PURPOSE, and agrees that the Academic Dean, with the approval of the Superintendent, has authority to set priorities and plan expenditures from the FUND consistent with the INTENDED PURPOSE.
4. **Restriction as to Amount of Spending from the Fund.**
- (a) If requested to do so in writing by the ACADEMY, the USNA FOUNDATION may, as of right, disburse to or for the benefit of the ACADEMY, from the FUND, and for the INTENDED PURPOSE, up to five hundred thousand dollars (\$500,000) in FY 2016 (July 1, 2015 to June 30, 2016), and a like sum, if supported by an annual request by the ACADEMY, in each fiscal year thereafter. Such disbursement(s) shall be made upon submission to the FOUNDATION of a written request(s) detailing the purpose of the draw. If, in a given year, the ACADEMY and USNA FOUNDATION perceive a need for more than \$500,000 to support the INTENDED PURPOSE, they may jointly ask the CLASS to authorize disbursal of a higher amount.
 - (b) The PARTIES intend that the FUND be treated as a "temporarily restricted" fund for the USNA FOUNDATION'S accounting purposes.
 - (c) The CLASS intends to support the INTENDED PURPOSE until the FUND is exhausted.
5. **Review of the Agreement.** The PARTIES will undertake a complete review of the terms of the AGREEMENT during FY 2019, with a view toward determining, among other things, whether the spending limit specified in paragraph 4 above should be adjusted, up or down, in light of the cash and outstanding pledge balances of the FUND, the private gift funding needs of the '63 CAE, the then-current and projected total balance of other gift funds being used to support the '63 CAE or its successor program, and other factors deemed appropriate at that time.
6. **Restricted Funds – Investment and Distribution.** The USNA FOUNDATION sets the policy for the handling of restricted funds (including temporarily restricted funds) benefiting the ACADEMY. Consistent with this policy, the USNA FOUNDATION may, at its discretion, commingle the FUND for investment purposes with other restricted and/or unrestricted funds. The USNA FOUNDATION shall have sole discretion in the investment of

the monies comprising the FUND and such investments shall be made in a manner consistent with the investment policy set by the USNA FOUNDATION's Board of Directors.

7. **Fees.** It is agreed and acknowledged that the FUND will share a fair portion of the total management costs of the USNA FOUNDATION. The USNA FOUNDATION charges fees for the establishment, administration, distribution and continued investment of all restricted funds under its management.
 - a. The current establishment fee for the FUND equals five percent (5%), which is charged against restricted gifts and pledge payments (contributions) to the FUND. By agreement between the USNA FOUNDATION and the 1963 FOUNDATION documented in a Memorandum of Understanding (MOU) dated 6 March 2008, the establishment fee is waived on all individual commitments from donors of \$100,000 or more, which include at least a 5% (e.g., \$5,000 of \$100,000) commitment to the unrestricted Annual Fund. Notwithstanding paragraph 1 of this AGREEMENT, the waiver provisions of the MOU shall continue to apply to future gifts to the FUND by individuals. Additionally, the 1963 FOUNDATION has previously resolved to transfer a major portion of its remaining assets to the FUND in support of the '63 CAE. The 5% establishment fee on such future transfers from 1963 FOUNDATION or on gifts from the CLASS, for the '63 CAE, of funds that were previously held by the 1963 FOUNDATION will be waived.
 - b. The administrative fee for the FUND is 0.85 percent (85 basis points) per annum, calculated on the FUND balance as of the end of the USNA FOUNDATION's fiscal year (currently June 30), and will be paid from the FUND balance in quarterly installments.
 - c. These fees may only be changed by written agreement between the PARTIES.
8. **Additional Gifts.** The Parties intend that individuals shall continue to have the right to direct new private gifts to the FUND through donations, bequests, or other gift vehicles. All new gifts designated for the FUND shall be subject to the terms and conditions of this AGREEMENT.
9. **Recognition.** To appropriately acknowledge the substantial commitment made by the donors in the CLASS for the INTENDED PURPOSE, the PARTIES agree to the following:
 - a. The Academic Center at the ACADEMY will be named "The Class of 1963 Center for Academic Excellence" (the "NAME"). The NAME shall be prominently displayed within the '63 CAE, and shall be used by the USNA FOUNDATION and the ACADEMY whenever the '63 CAE is referred to in their publications, announcements, or other media. Although the ACADEMY shall have the discretion to determine that the NAME not be used in perpetuity, the NAME will exist through at least December 31, 2050, whether or not the FUND continues to support INTENDED PURPOSE through that date. Furthermore, use of the NAME will continue beyond December 31, 2050 as long as the FUND continues to support the annual spending cap specified in paragraph 4 of this AGREEMENT, provided that the spending cap shall not be lowered solely to extend the use of the NAME beyond FY 2050.

- b. A plaque recognizing donors who have made significant contributions to the FUND (the "STRIPER PLAQUE") shall be continuously and prominently displayed in the lobby of the '63 CAE or its successor facility, perpetually. The data to support updates to the STRIPER PLAQUE based on gift receipts during the previous calendar year will be provided by the USNA FOUNDATION to the CLASS annually in February. It will be the CLASS's responsibility to contract for and fund any changes to the STRIPER PLAQUE. Monies from the FUND may not be used for this purpose.
 - c. The 1963 FOUNDATION plaque demonstrating its support to children of fallen classmates shall be prominently displayed in the '63 CAE.
 - d. To honor the donors, and to express the appreciation of the USNA FOUNDATION, appropriate publicity in the form of news announcements, both internal and external, may be given.
- 10. Reporting.** The USNA FOUNDATION agrees to periodically report to the CLASS on the progress and achievements made possible by the FUND. Annually during the first quarter of its fiscal year, the USNA FOUNDATION shall review with the leadership of the CLASS the gift funded budget requirements of, and total gift funds available for, the '63 CAE. Finally, the FUND balances will be available on-line or by request at all times to the President of the CLASS and/or his designated representatives.
- 11. Succession.** This AGREEMENT shall be binding upon the successors and assigns of the CLASS and the USNA FOUNDATION. Nothing in this AGREEMENT is to be construed as creating a personal liability on the part of members of the ACADEMY's graduating class of 1963, their estates, trusts, heirs, legal representatives, and their respective successors and assigns.
- 12. Quid Pro Quo.** The USNA FOUNDATION attests that the donors to the FUND identified herein, in return for their respective commitments, have received no substantial goods or services. Also, it is understood that this AGREEMENT does not confer upon the CLASS the authority to determine or influence the ACADEMY's or USNA FOUNDATION's policies or programs or to participate in the hiring or direction of any individual(s) who may be compensated by virtue of the FUND.
- 13. Changed Conditions.** The subject of this AGREEMENT and the support of/for the INTENDED PURPOSE by the CLASS will be protected from obsolescence and impracticability. Should the purpose for which this AGREEMENT embodies become, in the judgment of the USNA FOUNDATION's Board of Directors and agreed to by the then Superintendent of the ACADEMY, obsolete, impracticable, or incapable of fulfillment, then the FUND shall be used, with the concurrence of the CLASS, exclusively to supplement the education of, and educational opportunities for, midshipmen at the ACADEMY (the "NEW EDUCATIONAL PURPOSE"). The CLASS and the members of the CLASS who have donated to the FUND shall be prominently identified and recognized for their contributions to the NEW EDUCATIONAL PURPOSE in a location incorporated into, co-located with, and/or proximate to the facility or entity then being supported by the FUND.

14. Power to Rescind or Amend. The PARTIES reserve the power, only by joint action, to rescind or amend this AGREEMENT by a written instrument signed by each of them to such effect.

15. Governing Law. The FUND will be administered under the laws of the State of Maryland. Moreover, this AGREEMENT and the validity thereof shall be governed by and construed in accordance with the laws of the State of Maryland.

16. Severability. Should any provision(s) of this AGREEMENT be found or declared unenforceable or void by any court or competent tribunal for any reason, the remaining provisions shall be severable and fully enforceable as if no such finding of unenforceability had issued; provided, however, that if such severance constitutes a changed condition, the provisions of Paragraph 12 shall apply.

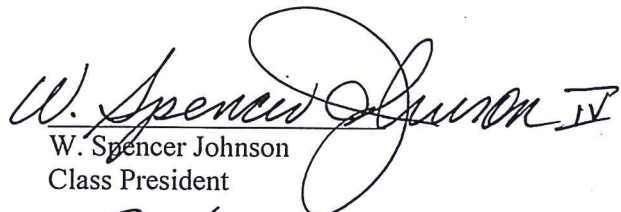
17. Noted by USNA. The ACADEMY, by signature of its authorized representative below, hereby takes note of this AGREEMENT, and of the purpose of the FUND, and the limitation on expenditures.

IN WITNESS WHEREOF, the PARTIES to this AGREEMENT enter it voluntarily and have affixed their signatures:

U. S. Naval Academy
Class of 1963

United States
Naval Academy Foundation, Inc.

By:


W. Spencer Johnson
Class President

Henry J. Sanford
CFO and Treasurer

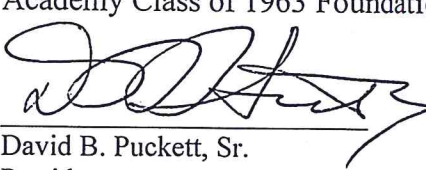
11 Sept 2015
Date

Date

Noted: U.S. Naval Academy

United States Naval
Academy Class of 1963 Foundation, Inc.

F. Joseph Rubino
Deputy for Finance



David B. Puckett, Sr.
President

Date

9 September 2015
Date