

**The Hope Alliance**  
**Atitlan Education Resource for Opportunity Education Fund**  
**A Special Assistance Scholarship Fund for Santiago Atitlan, Guatemala**

The Hope Alliance Atitlan Education Resource for Opportunity Education Fund (the “Fund”) is established as of the \_\_\_\_ day of \_\_\_\_\_, 2007, by The Hope Alliance through the authority of the Board of Trustees of The Hope Alliance, to be held and used for The Hope Alliance for its exclusive use, benefit, or purposes as stated in The Hope Alliance mission statement as in effect from time to time, and as stated in this Instrument, as amended from time to time as allowed in it. Any use of the fund must be in a manner consistent with uses proper for an organization exempt from income tax and described in Internal Revenue Code (“IRC”) § 501(c)(3) which under IRC § 509(a) is not a private foundation, and which is qualified to receive donations deductible by donors (to the extent allowable under applicable law) for federal income tax purposes.

I. Adoption and Undertaking

- A. This Instrument (the “Instrument”) is undertaken by The Hope Alliance for governing the investment and use of funds and property in the Fund. This Instrument is intended to establish administrative processes to accept and administer as a fiduciary in a prudent and efficient manner the investment of property or funds that are added to the corpus or principal of the Fund or accumulated in the Fund, and to make proper distributions of amounts available for distribution for Fund purposes.
- B. When this Instrument does not indicate the appropriate course of action or allow the Governing Board of the Fund to do so, or where it is otherwise appropriate in light of all aspects of a specific situation, at the request of the Governing Board of the Fund, the President of The Hope Alliance or such President’s delegee is to work with the Board of Trustees of The Hope Alliance to have the Board of Trustees establish with the Governing Board, or to request the Board of Trustees to allow the Governing Board to establish, the appropriate course of action or a policy or procedure by which such course may be determined, in keeping with the purposes of this Instrument, and to amend this Instrument pursuant to VI below, if appropriate.

II. Funding the Fund

- A. The Fund has been established with a gift or gifts from one or more private donors, which amount comprises the initial corpus or principal of the Fund. All contributions to the Fund are irrevocable. The corpus is to be invested, and the income or the net appreciation is to be used to fund special assistance or scholarships for appropriate persons in Santiago Atitlan, Guatemala, to participate in education beyond the primary level, particularly those leading to a trade or profession, in accordance with the purposes of this Fund as described in VIII below. To the extent feasible, the corpus is to remain intact in perpetuity, thereby continuing to generate funds to be used by The Hope Alliance for Fund purposes.

See IV below. Donations may be made to the Fund specifically for the purpose of building or increasing the corpus for income-generating purposes. Normally, the gain or loss on the sale of any asset, which originally comprised or was later added to the corpus, shall be allocable to the corpus of the Fund, subject, however, to IV below.

- B. Gift instruments for the purpose of contributing to the Fund corpus may consist of stock transfers, cash, wills, deeds, grants, conveyances, Instruments, memoranda, writings, or any other governing documents under which property may be transferred to or held by The Hope Alliance.
- C. Upon a transfer by a donor to the Fund, the policies, rules, and procedures established by this Instrument or by the Governing Board from time to time as allowed under this Instrument, govern any contributions to this Fund and supersede any stipulations, parameters, or other limitations which may have been imposed or suggested by donors to this Fund not accepted in writing by the Governing Board. No donor may impose any condition inconsistent with this Instrument on any part of the Fund, and the income from the Fund shall not be restricted other than for use in accordance with the purposes of this Fund, including for reasonable expenses related to the Fund. The Governing Board of the Fund may in its discretion accept reasonable conditions relating to principal or Fund appreciation consistent with this Instrument and the purposes of the Fund. No contributions may be conditioned in any way on any particular use or benefit to be provided by the Fund or The Hope Alliance, or on any particular person to be benefitted.
- D. If The Hope Alliance itself makes any contribution to the Fund, such contributions and the income and appreciation related to them shall be treated as a separate subaccount sharing proportionately general expenses of the Fund allocable to income or corpus in the same proportion its share of income or corpus (as applicable) bears to the entire income or corpus of the Fund. The provisions of IX below apply to such a subaccount.

### III. Governance of the Fund

- A. The Hope Alliance Board of Trustees shall appoint for the Fund a Governing Board of not fewer than three members for the purpose of managing the Fund. At least a majority of the Governing Board shall be comprised of members of The Hope Alliance Board of Trustees. Each Governing Board member (“Trustee”) so appointed shall qualify as a Trustee by mailing or delivering a signed consent to act as Trustee to The Hope Alliance. Governing Board members serve at the behest of The Hope Alliance Board of Trustees. If a member of the Governing Board is also a member of The Hope Alliance Board of Trustees, then on any resignation or removal from The Hope Alliance Board of Trustees, such member shall automatically cease to be a member of the Governing Board, unless otherwise specified by The Hope Alliance Board of Trustees.
- B. The Governing Board may designate one or more of any Trustee or any individual or committee to execute and deliver on behalf of the Fund any and all documents

which may be required to effect the investment, sale, transfer, or delivery of any asset of the Fund, or the purchase or other acquisition of assets by the Fund, and to sign checks, drafts, or other orders for the payment or withdrawal of funds from any bank or financial account for the Fund, or otherwise execute documents or instruments under authority of the Governing Board. Where such designation is made, it shall be in writing signed by or under the authority of the Governing Board, and such designation may be revoked at any time by the Governing Board.

- C. No gifts shall be accepted in which the donor directs the investment transactions or holdings or may approve investment policy or strategy. The investment of the Fund shall be under the sole control of the Governing Board. The Governing Board may establish from time to time investment policies and criteria which may apply to all or specified portions of the Fund, which portions, except as to The Hope Alliance itself, shall not be separately identified by reference to the contributions of a donor or donors. Some or all the investments of the Fund may be in investments with higher risk and return expectations compatible with a 30-year or greater investment time horizon, for purposes of building Fund corpus for the future or other appropriate purposes if the Governing Board deems this appropriate, given the size and nature of assets held by the Fund and other relevant considerations.
- D. In addition to the powers conferred on the Governing Board Trustees by law, the Trustees are authorized and empowered, subject to the provisions in this Instrument, in their sole and absolute discretion:
  - 1. To invest and reinvest any of the principal of the Fund in any property, real or personal, as they may determine, including mortgages, stocks, bonds, debentures, and other securities of, shares in, or obligations of profit or nonprofit corporations, associations, and obligations of any state or federal governmental agency or authority; to retain any property contributed by a donor to the Fund or transferred or added to the corpus in the same form as it was received, so long as it is reasonable to do so.
  - 2. To include all or any part of the Fund in any pooled or common fund maintained by The Hope Alliance, and invest any or all of the Fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, or real estate investment trusts, or in similar organizations in which funds are commingled and specific investment determinations are made by persons other than the Governing Board.
  - 3. To contract with independent investment advisors, investment companies, investment counsel or managers, banks, or trust companies to invest and reinvest any or all of the Fund.
  - 4. To authorize the payment of reasonable compensation for investment advisory or management services.

5. To establish and modify investment policies from time to time, including as to investments to be avoided, income return expectations, risk parameters and time horizons, United States or foreign security proportions, or other matters deemed relevant; some such policies may apply to some of the assets of the Fund but not others, to the extent specified by the Governing Board.
- E. The standard for making investment decisions for the Fund is the "Prudent Investor Rule," which is set forth in part 9 of Chapter 75-7 of the Utah Code (UCA § 75-7-901 *et seq.*, the Utah Uniform Prudent Investor Act). The Trustees will be guided by, but will not be legally bound by, the Uniform Principal and Income Act, UCA § 22-3-101, *et seq.*, in allocating receipts and disbursements between corpus and income; however, notwithstanding UCA § 22-3-104(1), net appreciation shall not be subject to adjustment to treat any portion of it as income.
- F. The Governing Board shall have the power and discretion to interpret and apply the investment provisions of this Instrument in good faith, which interpretation or application shall be binding on all concerned, absent an abuse of discretion. It may adopt policies and procedures and otherwise act with respect to the Fund, consistent, however, with this Instrument.
- G. The Governing Board shall act as to any matter, including appropriations of amounts from the Fund, by a majority voting at a meeting at which a quorum is present, unless action by a larger proportion is required by this Instrument or any applicable by-laws or rules. Action without a meeting may be taken by the appropriate majority or proportion of the members of the Governing Board in accordance with applicable rules or by-laws consistent with the state nonprofit corporation law to which The Hope Alliance is subject.
- H. The Governing Board may adopt rules or by-laws to govern its internal affairs and meetings. Unless and until superseding separate rules or by-laws are adopted by the Governing Board, the By-laws of The Hope Alliance shall apply.
- I. The Governing Board may adopt a calendar or a fiscal year for purposes of this Instrument, including for the determination of a year under IV and V below. In addition to other competing considerations, the Governing Board shall consider adopting a year compatible for practical implementation of the purposes of the Fund in light of the fiscal year of The Hope Alliance. The initial year or any transition year on a change in fiscal years may be less than 12 months, but no such year shall be more than 12 months. In the absence of some other specific designation of a fiscal year, the fiscal year of The Hope Alliance shall apply.
- J. Regular financial and operational reports with respect to the Fund shall be provided to the Governing Board and to The Hope Alliance.

#### IV. Appropriation of Appreciation or Corpus

- A. Except where an appropriation of corpus or appreciation is authorized pursuant to IV.C. below, the Fund's Governing Board, by majority action in the normal

manner (subject to normal quorum requirements, etc.), may appropriate for expenditure for the uses and purposes for which the Fund is established as described in VIII, any amount up to but not more than ten percent (10%) of the net appreciation in one year realized and unrealized by the corpus of the Fund, unless the appreciation has earlier been accumulated and added to corpus. Such appropriation shall only be made where the income of the Fund unexpectedly is not reasonably adequate to meet benefit commitments made earlier. Net appreciation for the purpose of the foregoing limited authority means appreciation during the year in question less a proportionate share of the expenses generally allocable to corpus for that year as if all the appreciation had been corpus in that year for the full year. This appropriation of net appreciation must occur, if at all, not earlier than the first day of the year following the appreciation year at issue and no later than the last day of the year following the appreciation year at issue. Any portion of such net appreciation (*i.e.*, up to 10% of the net appreciation for a particular year) that is not appropriated in that one-year time period after that appreciation year, will be added to the corpus of the fund on the first day of the second year following the appreciation year at issue. All appreciation not subject to the foregoing limited authority as to 10% of net appreciation in a given single year, shall be accumulated and added to corpus; such appreciation which is not subject to the foregoing limited authority is gross appreciation unreduced by expenses. The Governing Board may earlier add the unappropriated appreciation for the given year to corpus if the action to do so is taken by the Governing Board not later than three months prior to the end of the applicable one-year time period for appropriation.

- B. The net appreciation, realized and unrealized, may not be used or available for use for general operating or fund-raising expenses or capital expenditures of The Hope Alliance, even where related to the Fund. Net appreciation from funds not otherwise further restricted by donors with the signed agreement of the Governing Board, shall be considered restricted by provisions of this Instrument. Donors further may restrict the use of appreciation if, but only if, the restriction is explicit and unambiguous in the gift instrument and such restriction is expressly accepted in writing by authority of the Governing Board.
- C. Except as set forth in this paragraph IV.C., no portion of the corpus or of any appreciation not subject to the limited authorization under A. above, shall be appropriated for any purpose by the Governing Board. The corpus or such appreciation beyond the limited authority of A. above, may only be appropriated by the Governing Board in its discretion with the approval of at least two-thirds of the Trustees serving on the Governing Board (not just a quorum) where income is unexpectedly too low to meet prior commitments for benefits in keeping with the purposes described in VIII below.
- D. Subject to proper investments in bonds, debentures, and similar marketable debt instruments, and subject to proper deposits in bank accounts and similar cash accounts, no loans from corpus shall be made. A scholarship or similar benefit granted for a proper purpose as described in VIII below shall not be considered a

loan merely because the grantee may be required to repay the grant under certain circumstances related to the grant (for example, failure to complete a course, failure to work in a required area after schooling, or similar conditions).

- E. “Historic dollar value” is defined as the aggregate fair value in dollars:
  - 1. of the Fund at the time it came into existence,
  - 2. of each subsequent donation to the Fund at the time it is made, and
  - 3. of each accumulation to corpus made pursuant to the terms of this Instrument or to a direction in an applicable gift instrument at the time the accumulation occurs.
- E. “Net Appreciation” is defined as the increase in the fair value of the corpus of the Fund over the historic dollar value of the Fund, less expenses allocable to corpus
- F. If a request for an appropriation of net appreciation is received for an appropriate use and is granted by the Governing Board, such net appreciation shall be appropriated by the Governing Board within a reasonable time of such granting of the request.

#### V. Appropriation of Income

- A. The Governing Board may appropriate for use in accordance with VIII below, all or any portion of the income of the Fund in any year. This appropriation must occur, if at all, not earlier than the first day of the year following the income year at issue and not later than the last day of that year. If not so appropriated within the year after the end of the year in which the income was earned, such income shall be accumulated and added to corpus on the first day of the second year following the income year at issue but may not be added to corpus earlier.
- B. If a request for such income is received for an appropriate use and the request is granted, such income shall be appropriated by the Governing Board within a reasonable time of such granting of the request.

#### VI. Amendments

This Instrument may be amended by the Board of Trustees of The Hope Alliance by act of a majority of such Board, voting at a meeting at which a quorum is present, except that to amend Article IV above to increase the ability either to appropriate corpus or to appropriate net appreciation, shall require the act of 80% or more of such Board members, not just those voting at a meeting at which a quorum is present. Other than pursuant to VII, no amendment to this Instrument shall be allowed in order to use income, appreciation, or corpus other than for the purposes described in VIII. Article VIII may be amended but not in a way to change the Fund from supporting education in Guatemala.

#### VII. Termination of the Fund

The Fund may not be terminated while it holds assets, prior to a vote to dissolve The Hope Alliance as specified under The Hope Alliance Articles of Incorporation. At such time as The Hope Alliance is dissolved according to its Articles of Incorporation, the Fund will be terminated, as well. Upon termination, any assets, including income and appreciation realized or unrealized, in the Fund will be disposed of by the Board of Trustees of The Hope Alliance according to its Articles of Incorporation, but only for a purpose consistent with IRC § 501(c)(3) and to the extent feasible, for a purpose similar to that described in VIII below.

#### VIII. Purpose and Use of Fund

- A. The purpose of the Fund is to accumulate and use funds for the granting by The Hope Alliance of special assistance scholarships to enable individuals located in Santiago Atitlan, Guatemala to participate in education beyond the primary level, particularly those leading to a trade or profession which will provide skill or knowledge and be beneficial to the people of Guatemala, particularly to the people of Santiago Atitlan, Guatemala, and for reasonable expenses related to the administration of the Fund or the making of such grants. Education for which grants may be considered includes technical training, craft training and apprenticeship programs, scholastic study at the high school or college level, postgraduate education, or professional schools such as medical school. Grants may relate to a single class, a year's program of instruction, a multiyear educational commitment, or may be for such other educational or training program or term as may be found appropriate. If this Instrument is made applicable beyond Santiago Atitlan, the Governing Board may specify certain amounts or portions of the Fund allocable to donations made after that time for the general benefit of individuals residing in certain communities (*e.g.*, villages, cities, towns, provinces, or similar communities) in Guatemala and may modify such specifications from time to time, unless otherwise agreed in writing with a donor; however, amounts allocable to contributions made prior to that time shall be restricted for use to provide benefits in Santiago Atitlan. Amounts appropriated from the Fund shall be paid to The Hope Alliance to use in accordance with this Instrument and policies and procedures adopted by or under the authority of The Hope Alliance or to the extent delegated to the Governing Board, of the Governing Board (as applicable) pursuant to this Instrument. The Governing Board shall timely inform The Hope Alliance of the funds expected to be available and the amounts which are expected to be available for new grants not already committed.
- B. Such special assistance or scholarships which may be granted by The Hope Alliance, may include paying directly for, or reimbursing or advancing funds to individuals for, such things as tuition, books, school supplies, travel to school, room and board, incidentals, and similar expenses; or other such matters necessary or appropriate to enable the individual to obtain appropriate training or education. To the extent feasible, payments of the scholarship or special assistance should be made by The Hope Alliance directly to the educational institution or other provider of goods or services but may be made directly to the recipients of benefits under policies and procedures adopted by The Hope

Alliance or, if this function is delegated to the Governing Board, adopted by the Governing Board, to provide for a reasonable level of verification of proper use of the funds.

- C. The Hope Alliance Board of Trustees shall establish the qualifications for any grants of scholarships or special assistance, and the terms of such grants, and shall select, or shall establish a policy and procedure for the selection of, appropriate individuals to receive grants of special assistance or scholarships, and shall be responsible for assuring that the terms of any policies, procedures, or grants are met. The Hope Alliance may delegate any one or more of such functions to the Governing Board. Regardless of who selects or participates in the selection of grantees, all grants shall be made on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by The Hope Alliance.
- D. If a grant is not fully used for its intended purpose, or if a grant is repaid by a recipient, such amount shall be returned to the Fund by The Hope Alliance within a reasonable time. Amounts available for the purposes of a grant shall be deemed used first from other sources and lastly from amounts appropriated from the Fund to the extent reasonably practical.
- E. All dealings with individual applicants or grantees shall be by The Hope Alliance, which may receive advice and recommendations from a selection advisory committee established by it in Guatemala, consisting of at least three individuals residing in Guatemala, if feasible in the community to be served. Final benefit decisions shall be made by the Governing Board of the Fund. Any selection advisory committee in Guatemala shall be subject to policies and procedures adopted by the Hope Alliance consistent with this Agreement, which may include selection criteria, required disclosure of relationships with applicants or educational institutions, information reporting, and other such matters. The Hope Alliance may delegate other matters relating to the special assistance and scholarship program to the selection advisory committee, or to the Governing Board, including follow-up matters to assure the proper use of grants by recipients.
- F. The Fund, the Governing Board, any committee of The Hope Alliance Board of Trustees, or any agent for the Fund or for The Hope alliance shall have no obligation to any such applicant or grantee, and such persons located in the United States shall be, and such persons (if any) located outside of the United States may be (in the discretion of The Hope Alliance Board of Trustees), indemnified and defended by The Hope Alliance with respect to any expense (including attorney fees), damage, or liability relating to any claim by an applicant or grantee. Such mandatory or discretionary indemnity of any such person may be provided from the assets of the Fund as an expense relating to Fund operations.
- F. The Hope Alliance shall inform the Governing Board, or a person or persons delegated by it, of the amounts desired from time to time for such grants or expenses and shall provide such other relevant information relating to any grant or its use or relating to any expense of fund administration or the making of grants, as required by any applicable policy or procedure or as the Governing Board or its

delegee may request at or before the time of the appropriation, or of the grant or of the expenditure, or afterwards.

- G. As used in this Instrument, the term “grants” includes outright payments or payments subject to repayment on certain conditions which are specified in the grant and which are related to the purposes for which grants may be made.
- H. At no time shall the Fund be or become a “donor-advised fund” as described in IRC § 4966(d)(2). Except only for The Hope Alliance itself, no donor and no person appointed or designated by a donor shall have or have any reason to expect to have advisory privileges with respect to the use, distribution, or investment of any portion of the Fund by reason of the donor’s status as donor, and no part of the Fund shall be separately identified by reference to the contributions of a donor or donors.

#### IX. Subaccount

If a subaccount arising from contributions by The Hope Alliance exists as described in II.D. above, all appropriations made pursuant to IV or V shall be made first out of such separate subaccount, applying the percentage and other limits separately as to such subaccount. The amounts determined by applying the percentage and other limits to the entire Fund, less the parallel amounts appropriated from the subaccount, shall apply to remainder of the Fund in determining the availability for appropriation for appropriate purposes of the various portions of the remainder of the Fund (income, net appreciation, corpus). It is the intention of this provision to maximize the long-term impact of donations from outside donors.

#### X. General

This Instrument shall be governed by, interpreted under, and enforced pursuant to, Utah law. The Hope Alliance is an intended beneficiary of this Instrument entitled to enforce its provisions. Except as provided in VIII.F., no other person is a third-party beneficiary of this Instrument. Donors to the fund shall have the ability to enforce this Agreement, as amended and in effect from time to time, for a period of six years after the donation of at least \$5,000 to the Fund in a given fiscal year of the Fund, or for such longer period to which the Governing Board may agree in a signed writing with respect to a donor’s donating more than \$20,000 to the Fund in a given fiscal year of the Fund. Neither this Instrument nor the Fund shall be subject to or used to pay the general creditors of The Hope Alliance, to the full extent allowable by law, and to the extent so allowable by law, the Fund shall be exonerated, indemnified, and defended by The Hope Alliance from any liability, damage, or expense related to such creditor claims. Rather, the Fund is set aside and dedicated to the particular charitable purposes described in this Instrument or in accordance with the legal doctrine known as cy pres. A reference to any statute includes any amended version of it or any replacement of it dealing with the same subject matter.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

THE HOPE ALLIANCE

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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