

**AGREEMENT ESTABLISHING**

**THE \_\_\_\_\_ ENDOWMENT FUND**

**AN AGENCY ENDOWMENT FUND  
OF  
ONWARD! A LEGACY FOUNDATION**  
Serving the Four Corners Communities  
P.O. Box 26  
Cortez, CO 81321

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a \_\_\_\_\_ nonprofit corporation (“Grantor”), and **Onward! A Legacy Foundation**, a Colorado nonprofit corporation (“*Onward!*”), as follows:

**WHEREAS**, the Grantor in furtherance of its charitable purposes, deems it to be in its best interests to create a charitable fund to provide for \_\_\_\_\_, and

**WHEREAS**, the Grantor and *Onward!* desire to provide for the establishment of an agency endowment fund within *Onward!* for the benefit of the Grantor, *Onward!* is willing to serve the best interests of the Grantor by receiving, administering, and distributing all financial contributions upon the terms and conditions of this agreement, and

**WHEREAS**, the Grantor believes that *Onward!* is the appropriate institution to manage the fund,

**NOW, THEREFORE**, the parties agree as follows:

1. Name of the Fund. The Fund shall be established on the books of *Onward!* as an agency endowment fund and shall be known as **The** \_\_\_\_\_ **Fund** (herein the Fund).

2. Contributions from the Grantor. The Grantor may from time to time assign, convey or otherwise transfer to *Onward!* assets acceptable to *Onward!*, and *Onward!* shall hold, manage, invest, reinvest, administer and distribute all such assets subject to this Agreement as the Fund, or such other name as the parties may agree to from time to time; provided, however, that if assets transferred to *Onward!* from the Grantor were previously received by the Grantor as donor-restricted endowment gifts, such assets shall be managed as per the third party restrictions, subject to paragraph 4 below.

3. Contributions from Third Parties. Parties other than the Grantor may from time to time, at the urging of the Grantor or otherwise, give, devise, assign or convey to *Onward!*, subject to this Agreement, assets acceptable to *Onward!*, and *Onward!* shall hold, manage, invest, reinvest, administer and distribute all such assets in one or more endowment funds known as the Fund, or by such other name or names as the parties may agree to from time to time. *Onward!* shall not be obligated hereby to engage in the Grantor fund raising efforts or otherwise solicit gifts to the Fund, or to accept any particular gifts from the Grantor or any third party of the Fund.

4. Third Party Restrictions. If any third party offers a gift to *Onward!* for addition to the Fund upon any terms or conditions that are separate from, in addition to, or in any way inconsistent with the terms and conditions of this Agreement, *Onward!* shall accept such gift only if: A) the donor's separate terms and conditions are consistent with endowment gift acceptance guidelines that have been approved and adopted by both the Board of Directors of the Grantor and the Board of Directors of *Onward!*, or B) such separate terms and conditions are specifically approved and accepted by both the Board of Directors of the Grantor and the Board of Directors of *Onward!*. If a gift with separate terms and conditions is so accepted, *Onward!* shall establish a separate endowment fund as part of the Fund to hold and administer such gift.

5. Investments. *Onward!* shall have full and unfettered power to invest and reinvest all property held in the Fund in such manner as *Onward!* shall in its discretion determine, after considering any written recommendations that may be provided by the Grantor from time to time. *Onward!* may hold reasonable sums in cash for any period of time and may invest in properties of every kind and description, real or personal, tangible or intangible, without limitation; provided, however, that in making Fund investments, *Onward!* shall exercise the judgment and care, under the circumstances then prevailing, that persons of prudence, discretion and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital. *Onward!* shall not be responsible for any loss or reduction in value with respect to any assets held in the Fund unless such loss or reduction in the value is due to the intentional misconduct or negligence of *Onward!* or its employees or agents. *Onward!* may, in its discretion, engage investment advisors, custodians of securities, investment or property managers, appraisers, accountants, attorneys and other agents and advisors, and delegate to them such powers or authority as *Onward!* may determine, all as may be reasonably required for *Onward!* to carry out its duties and responsibilities with respect to the Fund, and may pay the reasonable fees and expenses of all such agents or advisors as direct expenses of the Fund.

6. Income Distributions. *Onward!* shall pay all income produced by the Fund, less administrative fees and any other applicable costs, (determined in accordance with *Onward!* policies and procedures), at least annually to the Grantor, or as the Grantor may direct in writing from time to time for support of the Grantor programs; provided, that, Grantor may authorize in writing that *Onward!* accumulate all or any portion of such earnings for any one or more years and either add such accumulated earnings to principal, or hold it subject to further direction from the Grantor.

7. Distributions and Loans from Principal. It is the intent of the parties that the principal of the Fund shall be preserved in perpetuity. However, distributions from principal to or for the benefit of the Grantor, or loans from principal to Grantor may be made as follows. *Onward!* may from time to time make one or more distributions or loans from principal to or for the benefit of Grantor but only to meet an emergency need of the Grantor and then only if the distribution has been approved both by a vote of three-fourths of all directors of the Grantor then in office and by a vote of three-fourths of all members of the Board of Directors of *Onward!* then in office.

8. Spendthrift Provisions. Notwithstanding any other provision of this Agreement, no income or principal distributable from any fund may be assigned or encumbered by Grantor, or be attached by or subject to the interference or control of any creditor of Grantor, or reached by any legal or equitable process in satisfaction of any debt or liability of the Grantor, prior to its actual receipt by the Grantor.

9. Cy Pres. If at any time and for any reason, the Grantor shall cease to operate or to exist, or shall cease to be qualified as a tax-exempt organization described in section 501(c)(3) of the Code, contributions to which are deductible under section 170(c) of the Code, then the Grantor has the right to select one or more organizations that are carrying out appropriate purposes reasonably similar to those that had been pursued by the Grantor, and shall substitute those organizations for the Grantor for all purposes of this Agreement, subject to the approval of the Board of Directors of *Onward!*. Further, if at any time at or after any substitution referred to in the preceding sentence, the Board of Directors of *Onward!* shall determine, in its sole judgment that the purposes that had been pursued by the Grantor have become unnecessary, undesirable, impractical, incapable of fulfillment or inconsistent with the primary charitable objectives of the Fund, then this Agreement shall terminate and all funds held subject to this Agreement shall be transferred to the general unrestricted funds of *Onward!*.

10. Component Part of *Onward!*. It is intended that the Fund shall constitute a separate fund within, and shall be a component part of, *Onward!*. As such, the Fund shall at all times be held and administered in accordance with the provisions of *Onward!* Bylaws and policies, as they now exist or may be hereafter amended, all of which are hereby accepted and agreed to by the Grantor, including those provisions relating to the amendment or termination of directions from donors. Grantor acknowledges that under the provisions of the Bylaws and applicable tax regulations, the Board of Directors of *Onward!* shall have the power and the duty to modify and eliminate any designation, restriction, or condition on the distribution of funds for any specified charitable purposes or designated organizations if in its sole judgment (without the necessity or approval of any participating trustee, custodian or agent) such designation, restriction, or condition becomes in effect unnecessary, undesirable, impractical, incapable of fulfillment or inconsistent with the charitable needs of the geographic area served by *Onward!*.

11. Fees and Expenses. As a contribution to its general operating expenses, *Onward!* shall be entitled to transfer to its general funds each year from the Fund held hereunder an annual administrative fee equal to one percent (1.0%) of the total net fair market value, assessed monthly (minimum \$10 per month) of each such Funds, or such other amount or amounts as may be agreed to from time to time by the parties; provided, however, no such fee shall be payable with respect to any such Fund unless and until *Onward!* has received assets constituting an initial contribution establishing such Fund. Such fees shall be paid monthly on or about the first day of each calendar month. In addition, *Onward!* shall be entitled to pay as they accrue, from the Fund, all

direct expenses of accepting, holding, protecting, investing, administering and distributing the Fund. Further, *Onward!* shall have no duty to incur any debt, expense or other obligation of any kind with respect to the Fund unless such debt, expense or other obligation can and shall be fully paid and satisfied solely from the assets of the Fund.

12. Records, Reports and Audits. *Onward!* shall maintain reasonable books, records and accounts of the Fund, and all such books, records and accounts shall be open to inspection, upon reasonable notice by the Grantor and its authorized representatives, at the principal office of *Onward!* during normal business hours. *Onward!* shall prepare and distribute to the Grantor, at least quarterly, a written financial report covering the funds held subject to this Agreement, showing the assets then held as the principal of the Fund and all receipts, expenses and distributions during the period covered by the report. The parties anticipate that the Fund will be included in the annual information returns filed by *Onward!* and in any audited financial reports prepared by *Onward!* Therefore, the Fund will be carried on *Onward!* books and also those of the Grantor, in accordance with FASB accounting standards. *Onward!* shall not be obligated to obtain a separate audited financial report for the Fund.

13. Binding Effect; Amendments. This Agreement shall bind, and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement may be amended only by a written instrument signed by both parties that has been approved both by a vote of three-fourths of all directors of the Grantor then in office and by a vote of three-fourths of all members of the Board of Directors of *Onward!* then in office; provided, however, that *Onward!* shall have the power, acting alone, to amend this Agreement in any manner required for the sole purpose of ensuring that *Onward!* qualifies and continues to qualify as a tax-exempt organization described in section 501 (c)(3) of the Code, and that the Funds qualify as component part of *Onward!* as a “community trust” within the meaning of Treas. Reg. section 1.170A-9(e)(10)-(14).

14. References to Code. All references to the Code are to the Internal Revenue Code of 1986, as amended from time to time, and shall include the corresponding provisions of any subsequent federal tax law.

15. Dispute Resolution. Prior to the filing of any lawsuit by any party or third party to this agreement, the parties shall attempt to resolve any dispute that arises from this agreement through mediation if the parties can mutually agree on the selection of a qualified mediator, or through arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Judicial proceedings may be commenced only in the event that a dispute remains after these measures. The mediation or arbitration shall be held in Cortez, Colorado. Each party shall bear its own expenses, including but not limited to all attorneys' fees and costs of the proceedings, unless otherwise determined by agreement or by the court of jurisdiction. Punitive damages shall not be applicable to mediation or arbitration proceedings.

16. Governing Law. This Agreement is made and delivered in the City of Cortez, Colorado and shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the Grantor and *Onward!* have executed this Agreement as of the date first above written.

The Grantor

A \_\_\_\_\_ nonprofit corporation

By \_\_\_\_\_

Its: \_\_\_\_\_

ONWARD! A Legacy Foundation

A Colorado nonprofit corporation

By \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A"**

**Onward! A Legacy Foundation  
PO Box 26  
Cortez, CO 81321**

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Name of Fund: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_

**Fund Advisory Committee:**

Chairperson:

1) \_\_\_\_\_ (name, position)  
\_\_\_\_\_ (street address)  
\_\_\_\_\_ (city, state, zip)  
\_\_\_\_\_ (phone)

2) \_\_\_\_\_ (name, position)  
\_\_\_\_\_ (street address)  
\_\_\_\_\_ (city, state, zip)  
\_\_\_\_\_ (phone)

3) \_\_\_\_\_ (name, position)  
\_\_\_\_\_ (street address)  
\_\_\_\_\_ (city, state, zip)  
\_\_\_\_\_ (phone)

4) \_\_\_\_\_ (name, position)  
\_\_\_\_\_ (street address)  
\_\_\_\_\_ (city, state, zip)  
\_\_\_\_\_ (phone)

Any changes or additions to the fund advisory committee listed either above and/or on an attached form must be made pursuant to a written resolution by the chairperson of this committee.