

AGREEMENT ESTABLISHING

THE _____ FUND

**A DONOR ADVISED FUND
OF
ONWARD! A LEGACY FOUNDATION**
Serving the Four Corners Communities
P.O. Box 26
Cortez, Colorado 81321

THIS AGREEMENT is made this _____ day of _____, 20____, between _____ (“Grantor”) and **Onward! A Legacy Foundation**, a Colorado nonprofit corporation (“*Onward!*”).

Grantor hereby transfers to *Onward!* property consisting of those assets listed on Exhibit A attached hereto, as an irrevocable gift to *Onward!* to be held as a separate fund (the “Fund”) and to be administered and distributed in accordance with the terms and conditions of this Agreement. *Onward!* hereby accepts this gift and agrees to the terms and conditions of this Agreement.

1. Name of Fund. The Fund shall be established on the books of *Onward!* as an advised fund and shall be known as The _____ Fund.
2. Property Constituting Fund. The Fund shall include the property initially transferred to *Onward!* by Grantor, such additional property as may from time to time be transferred to *Onward!* by Grantor for inclusion in the Fund, such property as may from time to time be received by *Onward!* from any other source and accepted by *Onward!* for inclusion in the Fund, and all income and gains received with respect to any of the foregoing property. The Fund shall be the property of *Onward!* and shall not be deemed a trust fund held by it in any trustee capacity.
3. Use of Fund Assets. (Select either A or B below)

_____(A) Distributions. All or part of the principal and/or income of the fund shall be used or distributed for such purposes as the Board of Directors of *Onward!* shall determine from time to time, after taking into consideration any recommendations made in writing to *Onward!* by the Advisory Fund Committee (described below) in accordance with *Onward!* guidelines for advised funds.

_____(B) Distributions. It is the intent of Grantor that the Fund shall constitute a

permanent endowment fund. In any given year *Onward!* shall pay all income produced by the fund, less administrative fees and any other applicable costs, to be used or distributed for grants or administration as the Board of Directors of *Onward!* shall determine from time to time, after taking into consideration any recommendation made in writing to *Onward!* by the grantor's Advisory Fund Committee (described below) and in accordance with *Onward!* guidelines for advised funds.

4. General Fund Restrictions. Notwithstanding anything herein to the contrary, the Fund shall at all times be held and administered in accordance with the provisions of the By-laws and other operative documents of *Onward!* as it now exists or may be hereafter amended (the "Declaration"), all of which are hereby accepted and agreed to by Grantor, including those provisions relating to the amendment or termination of designations of specific organizations, restrictions with respect to the use of principal or income, and other directions or advice from donors. Grantor acknowledges that under the provisions of the Declaration and applicable tax regulations, the Board of Directors of *Onward!* shall have the power to modify or eliminate any designation, restriction, or condition on the distribution of funds for any specified charitable purposes or designated organization if in its sole judgment (without the necessity or the 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 *Onward!*.
5. Advisory Fund Committee.
 - (A) Committee Members. Such persons as Grantor shall appoint in writing from time to time shall comprise the "Advisory Fund Committee" for purposes of this Agreement. Grantor may upon written notification to *Onward!*, place or remove additional advisors on the Committee for the purposes of providing advice regarding the Fund. The Advisory Fund Committee shall appoint a Chairman who will represent the Committee to *Onward!*.
 - (B) Role of Committee. The Advisory Fund Committee shall meet from time to time and submit to the Board of Directors of *Onward!* written recommendations with respect to distributions of the Fund consistent with the above.
 - (C) Procedures. The Advisory Fund Committee shall conduct its activities in accordance with such rules and procedures as the Committee itself may establish, subject to the rules, regulations, and Policies of *Onward!*, and *Onward!* may rely on any writing signed by the chair of the Advisory Fund Committee that purports to set forth the recommendations of the Advisory Fund Committee. All expenses incurred by the Advisory Fund Committee in

connection with its activities and affairs shall be part of the normal administration of the Fund.

- (D) Term. The role of the Advisory Fund Committee under this Agreement shall continue indefinitely until the Fund is substantially depleted and scheduled to be terminated by the Board, or is otherwise terminated and/or no longer in existence. Following the termination of the Fund and the role of the Advisory Committee, all assets remaining in the Fund shall be transferred to the *Onward!*'s unrestricted funds. If at any time the Board of Directors of *Onward!* find that there is no effective Advisory Fund Committee, *Onward!* may take over the functions of the Committee.
6. Reports. *Onward!* shall render reports at least quarterly to Grantor or Grantor's designee showing the assets then held as the principal of the Fund and all receipts, disbursements, and distributions during the period covered by the report. All records of *Onward!* related to its management of the Fund shall be available for inspection by authorized representatives of Grantor at all reasonable times.
7. Investments. All assets held as part of the Fund shall be invested by *Onward!* in accordance with its general investment policies and objectives approved by the Board of Directors from time to time. Fund assets may be commingled with other assets of *Onward!* for investment purposes, provided that accurate accounts are kept of the Fund's share of any such commingled investments.
8. Management Fees and Expenses. *Onward!* shall be entitled to pay or reimburse itself for all reasonable expenses incurred by *Onward!* in managing the Fund, and shall be entitled to charge the Fund a general management fee to cover a portion of *Onward!* general operating expenses. The general management fee shall be consistent with *Onward!*'s normal practices of allocating costs of management among its various funds. Pursuant to the Declaration this fee shall be 1% of the Fund balance per year (minimum monthly fee of \$10), or the rate charged to other similarly situated Funds according to a management fee schedule approved by *Onward!*.
9. Component Part. It is intended that the Fund shall be a component part of *Onward!* and not a separate trust, and that nothing in this Agreement shall affect the status of *Onward!* as an organization described in section 501(c)(3) of the Internal Revenue Code and as an organization which is not a private foundation within the meaning of section 509(a) of the Code. This Agreement shall be interpreted in a manner consistent with the foregoing intention and so as to conform to the requirements of such provisions of the federal tax laws and any regulations issued pursuant thereto. *Onward!* shall have all of the powers provided in the Declaration, in *Onward!* Articles of Incorporation, Bylaws, and other operative documents, or otherwise by law in connection with its administration of the Fund. In addition, *Onward!* shall

have the power, acting alone, to amend this Agreement in any manner required for the purpose of ensuring that the Fund qualifies and continues to qualify as a component part of *Onward!* as a “community trust”, within the meaning of Treas. Reg. section 1.170A-9(e)(10)-(14).

10. 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.

11. Miscellaneous.
 - (A) This Agreement shall be irrevocable.
 - (B) References in this Agreement to the Internal Revenue Code or the Code are to the Internal Revenue Code of 1986, as amended, and shall include the corresponding provisions of any subsequent federal tax law.
 - (C) Paragraph captions are provided for convenience only and shall have no significance in the interpretation of this Agreement.
 - (D) This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
 - (E) This writing is an integrated agreement and is meant to embody the entire agreement between the parties.

If the terms of this agreement are acceptable to the Grantor, please so indicate by dating and signing this agreement in the space provided below and returning it to *Onward!* Such acceptance will constitute our entire agreement with respect to the Fund.

EXECUTED at Cortez, Colorado to be effective as of the date first above written

Grantor

Date

ONWARD! A Legacy Foundation
A Colorado nonprofit corporation

By _____

Date

Its _____

EXHIBIT "A"

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

Name of Fund: _____

Contact Name: _____

Email: _____ Phone: _____ Fax: _____

Address: _____

Fund Advisory Committee:

Chairperson:

_____ (name, position)
_____ (street address)
_____ (city, state, zip)
_____ (phone)

_____ (name, position)
_____ (street address)
_____ (city, state, zip)
_____ (phone)

_____ (name, position)
_____ (street address)
_____ (city, state, zip)
_____ (phone)

_____ (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.