

ENDOWMENT FUND AGREEMENT BETWEEN
THE COMMUNITY FOUNDATION OF HENDERSON COUNTY, INC.
AND
GEORGE M. JARVIS

CREATING THE FLETCHER COMMUNITY FUND

This agreement is made and entered into as of the 19th day of April, 1990, by and between the Community Foundation of Henderson County, Inc. (the "Foundation") and George M. Jarvis (the "Grantor").

The Foundation is a non-profit, tax exempt corporation serving as a community foundation for the benefit of Henderson County, North Carolina. The Grantor, in furtherance of the Grantor's charitable and civic purposes, desires to create an endowment fund with the Foundation. The Foundation and the Grantor therefore agree as follows:

1. NAME

A fund designated as the FLETCHER COMMUNITY FUND (the "fund") is created by this agreement as a component fund within the Foundation to receive gifts and to be administered according to this agreement.

2. INITIAL GIFT TO FUND

The Grantor has this day delivered to the Foundation the sum of \$500.00 to serve as the initial contribution to the fund.

3. PURPOSES

The purposes of the fund are to provide cultural, educational, historic, and civic enrichment for the community of Fletcher, located in Henderson County, North Carolina. The areas of enrichment may include, but shall not be limited to, the following:

- a. The restoration and preservation of sites and structures considered to have historic, architectural or environmental significance to the Fletcher Community;
- b. The planning, construction, improvement, repair, maintenance, and operation of facilities for the presentation of recitals and the exhibition of visual and performing arts, including two-dimensional art, sculpture, music, drama, and dance; and
- c. The support of lectures, community discussions, and civic issues forums.

The needs of a developing and changing community will require innovative and creative approaches to the enrichment of community life. The purposes of this fund

as generally stated in this item shall be interpreted broadly by the Foundation such that the cultural, educational, historic, and civic enrichment of the Fletcher Community shall be the guiding principle of the fund as community needs evolve over time.

4. DISTRIBUTION OF NET INCOME AND PRINCIPAL

The net income and principal of the fund, net of fees payable to the Foundation, shall be used solely for, or in furtherance of, the purposes of the fund. The Foundation may apply the net income and principal from the fund in such installments as it deems appropriate. The Board of Directors of the Foundation shall seek the advice and recommendations of the Advisory Committee described in Item 5 below, but the Board of Directors of the Foundation shall have sole and exclusive authority to disburse net income and principal.

5. FLETCHER COMMUNITY ADVISORY COMMITTEE

In order to ensure the application of the assets of this fund in a manner consistent with the purposes of this fund, the Foundation shall appoint a Fletcher Community Advisory Committee (the "Advisory Committee") which shall consist of no fewer than five nor more than ten members, at least a majority of whom shall reside within the municipal boundaries of the Town of Fletcher at the time of their appointment. The members of the Advisory Committee shall serve at the pleasure of the Foundation.

The Advisory Committee shall elect a Chairman and Secretary from its membership, and shall meet at least annually to give advice and make recommendations to the Board of Directors of the Foundation regarding the fund's use of the assets, including income or principal, and the committee's views concerning the cultural, educational, historic, and civic well-being of the community. The Foundation may call upon the Advisory Committee for recommendations on specific issues affecting the fund, in addition to the annual meeting called by the committee itself. The recommendations of the Advisory Committee shall be given due weight and seriously considered by the Foundation, though they shall not be binding upon the Foundation. Members of the Advisory Committee shall serve without compensation, although individual members may be reimbursed for their reasonable expenses. Members of the Advisory Committee shall be subject to the same prohibitions as set out in Item 10 of this Agreement.

6. DEFINITION OF "FLETCHER COMMUNITY"

The term "Fletcher Community" and references to the "Community of Fletcher" used in this agreement refer to that area which lies within the boundaries of the Town of Fletcher, a North Carolina municipal corporation located in Henderson County, North Carolina, as recently created by the North Carolina General Assembly, and as the boundaries of the Town of Fletcher may be modified

from time to time. If the Town of Fletcher ceases to exist, then for the purposes of this fund the Fletcher Community shall be the last boundaries of the Town of Fletcher.

The Foundation shall not be restricted in its decisions concerning this fund by reason of the fact that the Foundation's decisions may enhance the cultural, educational, historic or civic enrichment of areas adjacent to the Town of Fletcher boundary or to other portions of Henderson County, although the primary objective is the area within the boundaries of the Town of Fletcher.

7. SUB-FUNDS

The component fund created by this agreement shall consist of a "General Account" sub-fund and such other sub-funds as may be created from time to time. Assets in the General Account shall be used for the general purposes set forth in Item 3 of this agreement, without further restriction. Additional sub-funds may be created from time to time under the following terms and conditions:

- a. Sub-funds may be created only upon the recommendation of the Advisory Committee and with the approval of the Foundation.
- b. The purpose of any sub-fund shall not be inconsistent with the general purposes of this

agreement as set out in Item 3, but may contain additional restrictions in order to further the specific interests of potential donors in promoting designated programs and satisfying specific community objectives.

- c. No sub-fund may be created which will disqualify any or all of this fund as a component fund of the Foundation.
- d. If the aggregate value of all gifts, contributions, and devises from all sources to a sub-fund do not equal or exceed the sum of \$5,000 within three years from the date of the creation of the sub-fund, then all of the remaining assets of the sub-fund (including principal and income) shall be added to the General Account and the Foundation shall have full authority to hold and dispose of those assets as a part of the General Account, notwithstanding the specific purposes or any specific restrictions contained in the agreement creating the sub-fund.
- e. Sub-funds shall bear such designations as may be approved by the Foundation. Sub-funds may use the name of the donor or a person to be memorialized by the sub-fund, but any such designation shall, whenever practical, include after the special designation the words "of the Fletcher Community Fund" or some similar language.

- f. All funds in a sub-fund shall be managed and distributed in accordance with the agreement creating the sub-fund, provided the agreement creating the sub-fund is not inconsistent with this agreement.
- g. Each sub-fund shall continue according to its terms as long as the need therefore exists and adequate money or property is available for its purposes. The Board of Directors of the Foundation shall have full and sole authority to determine whether there is a continuing need for the sub-fund and whether there is adequate money or property available for its purposes. When a sub-fund terminates, any remaining funds in the sub-fund shall be added to the General Account.

8. GIFTS

Any person (whether an individual, corporation, trust, estate, or any other organization or entity) may make a gift to the Foundation for the purposes of the fund by making a conveyance of property or money to the Foundation designating that the assets conveyed shall be added to the fund. The form of the gift and any conditions associated with the gift must be acceptable to the Foundation. Any assets conveyed in this manner shall be added to the principal of the fund unless otherwise designated by the donor. Unless another sub-

fund is designated, any assets conveyed to the fund shall be added to the General Account. All such gifts, bequests and devises to the fund shall be irrevocable.

9. ADMINISTRATIVE PROVISIONS

- a. The Foundation shall manage the fund and shall have the full right of sale, investment and reinvestment as the Foundation may from time to time deem prudent, consistent with the terms of this agreement. The Foundation shall further have the full right to donate any or all of the assets of the fund to further the purposes of the fund, provided the recipient of any such donation is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code, as amended, or the corresponding provision of any future Internal Revenue Code. The Foundation shall hold, administer and distribute the fund according to the terms and purposes of this agreement.
- b. All property and money in the fund shall be the assets of the Foundation and may be commingled with other Foundation assets. The Foundation shall not be required to segregate the assets of the fund for investment purposes, but the Foundation shall be required to maintain separate accounts of the income and principal of the fund and each of its sub-funds

on its books and records, and to render accountings at least annually.

- c. For the purposes of this agreement, "principal" and "income" are defined according to the Allocation of Principal and Income Act in the State of North Carolina as set out in Chapter 37 of the North Carolina General Statutes, as amended from time to time. For the purposes of this agreement, "principal" and "income" shall not be defined according to, or subject to the provisions of, the Uniform Management of Institutional Funds Act as set out in Chapter 36B of the North Carolina General Statutes, as amended from time to time.
- d. If the aggregate value of all gifts, contributions, and devises from all sources to this fund does not equal or exceed the sum of \$5,000 within three years from the date of this agreement, then all of the assets of the fund (including principal and income) shall become non-restricted funds and the Foundation shall have full authority to hold and dispose of the assets as an unrestricted gift according to the general purposes of the Foundation, notwithstanding the specific purposes of this component fund.
- e. If the Foundation in good faith determines that any gifts, devises, or bequests to the fund have restrictions which are undesirable, impractical, or

impossible of fulfillment, then the Foundation is authorized to vary the terms and restrictions of any such gifts, devises, or bequests in order to best promote the purposes for which the fund exists.

- f. The Foundation shall not be responsible for the creation or operation of any programs under this fund. The utilization of disbursements from this fund shall be according to such terms and conditions as the Foundation determines will promote the purposes of this fund. The Foundation shall have no responsibility to see to the appropriate use of any funds paid to any tax exempt, non-profit entity, including the Town of Fletcher, a Municipality.

10. PROHIBITED DISTRIBUTIONS

No part of the principal or net income of the fund shall inure to the benefit of, or be distributable to:

- a. The Grantor or any immediate family member of the Grantor;
- b. Any officer or director of the Foundation or any immediate family member of any officer or director of the Foundation.
- c. Any member of the Fletcher Community Advisory Committee or any immediate family member of any member of the Fletcher Community Advisory Community.

Notwithstanding this prohibition, the Foundation is authorized and empowered to reimburse expenses, pay

reasonable compensation for services rendered, and pay payments and distributions in furtherance of the purposes set forth in this agreement.

11. FEES

The fund is responsible for bearing a fair portion of the total administrative costs of the Foundation. The fund is therefore subject to the uniform and regular charges, if any, made by the Foundation from time to time on its component funds according to its regularly adopted fee schedule.

12. TERMINATION

This fund shall continue as long as the need therefore exists, adequate money or property is available for its purposes, or until the Foundation dissolves or is terminated. The Board of Directors of the Foundation shall have full and sole authority to determine whether there is a continuing need for the fund and whether there is adequate money or property available for its purposes. When the fund terminates, any remaining funds shall be applied in such amounts and for such purposes as the Board of Directors in good faith determines to approximate most nearly the original charitable and benevolent purposes of this fund, after first receiving the recommendations of the Fletcher Community Advisory Committee. If, in the good faith opinion of the Foundation, the original charitable and benevolent

purposes of this fund cannot be determined or are impractical or impossible of fulfillment, then any remaining funds shall be applied in such amounts and for such purposes as the Board of Directors of the Foundation determines (after first seeking the advice of the Advisory Committee) to be consistent with the general charitable and benevolent purposes of the Foundation as set forth in its corporate charter. Any organization chosen to receive any of the remaining fund assets must be an organization exempt under the provisions of Section 501(c)(3) of the Internal Revenue Code, as amended, or the corresponding provision of any future Internal Revenue Code, or Town of Fletcher or other municipal corporation.

13. IRREVOCABLE

The gift made by the Grantor to create this fund is irrevocable.

14. LAW

This agreement shall be governed by, and construed according to, the law of the State of North Carolina.

Witness the Hands and Seals of the parties as of the day and year
set out above.

George M. Jarvis (SEAL)
GEORGE M. JARVIS, Grantor

Community Foundation of
Henderson County, Inc.

by: John W. Wagon
President/Vice President

CORPORATE SEAL
ATTEST:

Robert C. Edwards
Secretary/Assistant Secretary