

## AFFILIATION AGREEMENT

This AFFILIATION AGREEMENT is made and entered into as of the 1<sup>st</sup> day of April, 2019 (the “Effective Date”), by and between the **Estes Park Post 119, American Legion** (the “Post”) and **The Estes Park Post 119 Charitable Foundation** (the “Charitable Foundation”).

In consideration of the mutual promises below, the parties agree as follows:

- Relationship to be Established between the Post and the Charitable Foundation.  
The Post and the Charitable Foundation each intend, desire and agree to enter into a relationship in which the Charitable Foundation will assume responsibility for and/or assist the Post in continuing and expanding upon certain charitable and educational activities heretofore conducted by the Post. The Charitable Foundation will be better able to access funding sources that can only provide funding to 501(c)(3) organizations and thus are not available to the Post. All of such will occur in accordance with and subject to the terms and conditions set forth in this Affiliation Agreement.
- Congruency of Missions, Purposes and Activities.  
The Post and the Charitable Foundation believe that their respective missions, purposes and activities are not only compatible but can and will be furthered by the activities of the other and by a close affiliation between the organizations. It is similarly believed that the arrangement established by this Affiliation Agreement will further the missions and enable each organization to accomplish its purposes and activities in a more efficient and effective manner. The primary purposes of the Charitable Foundation under this Affiliation Agreement are (i) to support, assume and expand upon the charitable activities heretofore conducted by the Post and (ii) to support the mission and activities of the Post.
- Legal and Tax Status of the Organizations.  
The Post is a nonprofit corporation organized under the laws of the State of Colorado pursuant to Articles of Incorporation filed on April 23, 1929. The Post has received a determination letter from the Internal Revenue Service stating that the Post is an organization exempt from Federal income tax under Section 501(c)(19) of the Internal Revenue Code.  
The Charitable Foundation is a nonprofit corporation organized under the laws of the State of Colorado pursuant to Articles of Incorporation filed on April 1, 2019. It is expected and believed that the Charitable Foundation will qualify as an organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code, as a publicly supported organization under Section 509(a)(1) or 509(a)(2) of the Internal Revenue Code and not a private foundation, and that donors will be able to deduct contributions made to the Charitable Foundation as provided in Section 170 of the Internal Revenue Code. The Charitable Foundation, with assistance from the Post, will shortly file a Form 1023 with the Internal Revenue Service seeking such a determination letter.  
So long as this Affiliation Agreement is in effect, the Charitable Foundation will not amend its Articles of Incorporation from those filed with the Colorado Secretary of State on April 1, 2019 or amend its Bylaws from those adopted on April 1, 2019 without the prior written consent of the Post, which consent will not be unreasonably withheld or delayed.
- Ownership and Usage of Historic Headquarters Building.  
As soon as practicable after the Charitable Foundation receives its 501(c)(3) determination letter, the Post will transfer to the Charitable Foundation ownership of the historic Bureau of

Reclamation Headquarters Building located at 850 North Saint Vrain Avenue in Estes Park Colorado including the land on which that building is located and all improvements and fixtures contained therein (the "historic Headquarters Building"). This transfer of the historic Headquarters Building from the Post to the Charitable Foundation will be subject to and conditioned upon the members of the Post approving such transfer in accordance with the terms and requirements of the Post's Constitution. In addition, such transfer will be subject to and conditioned upon the Post and the Charitable Foundation entering into a Lease Agreement with respect to the historic Headquarters Building under which the Post will continue to have a primary, but nonexclusive, right to use the historic Headquarters Building for the programs and activities of the Post.

Following the transfer and the lease as described in the preceding paragraph, the Charitable Foundation will be solely responsible for the preservation, restoration, upgrading, improvement and maintenance of the historic Headquarters Building structure and its improvements and fixtures. The Post and the Charitable Foundation shall jointly determine the scope, priority and design of all improvement projects related to the historic Headquarters Building. Under the terms of the Lease Agreement, the Post will be solely responsible for all (i) property taxes, if any, with respect to the historic Headquarters Building and its associated land and other improvements, (ii) heat, electrical, water, sewer, garbage, internet and other utilities for the historic Headquarters Building, (iii) casualty and liability insurance with respect to the historic Headquarters Building and all of its fixtures, equipment and other contents and (iv) the janitorial, snow removal and landscape maintenance expenses of the historic Headquarters Building,

In accordance with the terms of the Lease Agreement and notwithstanding any provision that might be construed to the contrary, the Charitable Foundation shall have the right to make the Legion Hall and the kitchen facility available on a reduced cost basis to various 501(c)(3) and other charitable organizations, first responder organizations and community groups for their educational or outreach programs, fundraising events and meetings. The Charitable Foundation shall be entitled to collect and retain for its own account all rent or fees that it may charge such organizations and groups for their use of such facilities subject to the Charitable Foundation being obligated to reimburse the Post or any direct costs incurred by the Post in connection with such use in accordance with Section 10 below of this Affiliation Agreement. A portion of the basement area of the historic Headquarters Building shall be made available to youth organizations, including Explorer Scout Post 911 and Boy Scout Troop 8 for their meetings, activities and for storage of their equipment and materials. The Charitable Foundation shall also make the historic Headquarters Building available to the American Red Cross to serve as a temporary emergency shelter for the Estes Valley area. Office space and antenna space within the historic Headquarters Building will be provided to the Estes Valley Amateur Radio Club. The Post and the Charitable Foundation shall coordinate such uses of the historic Headquarters Building by the Foundation and its assigns with the Post's own use (including its rental of portions of the building). In case of a dispute as to competing uses, the desires of the Post shall prevail. The Lease Agreement contains provisions entitling the Post to repurchase the historic Headquarters Building back from the Charitable Foundation for a purchase price of one dollar (\$1.00) upon the occurrence of any of certain enumerated events including a breach by the Charitable Foundation of its obligations under this Affiliation Agreement or under the Lease Agreement, an attempted sale of the property by the Charitable Foundation or the failure of the Charitable Foundation to maintain its corporate existence as a 501(c)(3) nonprofit corporation organized under the laws of the State of Colorado. The terms and conditions of the Lease Agreement are incorporated into this Affiliation Agreement by this reference as if such were fully stated herein.

#### AFFILIATION AGREEMENT

5. Charitable Activities to be Assumed by the Charitable Foundation.  
In addition the charitable activities referred to in paragraph 4 above, the Charitable Foundation shall support, provide and expand certain existing and new charitable activities consistent with the mission of the Post and heretofore provided by the Post including, but not necessarily in the future limited to (i) programs and activities serving armed forces service members, veterans of past wars and their families including, but not necessarily in the future limited to the provision of benefits assistance, counseling services, and financial assistance, (ii) disaster preparedness programs, (iii) youth and educational programs including the Estes Park American Legion Oratorical Contest and (iv) such other charitable or educational programs and activities as the Charitable Foundation and the Post may jointly determine to be appropriate.
6. Other Activities and Programs of the Post and the Charitable Foundation.  
Notwithstanding this Affiliation Agreement, it is understood and agreed that the Post may continue, without the involvement of the Charitable Foundation (unless otherwise agreed) the Post's scholarship programs and the Post's social and fraternal support programs and activities for the Post's members, including the Post's Auxiliary, the Sons of the Legion, the Riders of the Legion and such other groups as the Post may initiate. Without limiting the foregoing, the Charitable Foundation shall have no control over or other involvement in the Post's Social Club or the sale of alcoholic beverages or other food or beverages by the Post or the Post's renting out the Legion Hall and kitchen for wedding receptions, private parties and other commercial uses. It is also understood and agreed that the Auxiliary of the Post may continue, without the involvement of the Charitable Foundation (unless otherwise agreed) the Auxiliary's fundraising and charitable activities and programs such as the Tiny Tots program.
7. Fundraising Activities by the Post and the Charitable Foundation.  
The Post and the Charitable Foundation shall coordinate their fundraising activities including the application for grants on behalf of the Post and the Charitable Foundation. Such activities may be conducted jointly, in the name of solely the Post, or in the name of solely the Charitable Foundation or as the Post and the Charitable Foundation may jointly decide is most appropriate in light of the nature of the fundraising activity or grant and the intended use of the funds. Either party may decline from participating in any manner in a fundraising activity of the other party or in a grant applied for by the other party if the first party, in its reasonable discretion, determines that its participation would be inconsistent with its mission, illegal, improper, impair the best interests of the first party or be inconsistent with or impose a financial risk or administrative burden beyond that reasonably anticipated by the terms of this Affiliation Agreement. Unless otherwise agreed by the parties at a later date, the Charitable Foundation shall not be involved in the Bingo or other gaming activities conducted by the Post. The parties will be explicitly clear with all donors and grantors of funds as to whether the funds will be received by the Post, received by the Charitable Foundation or shared jointly by the Post and the Charitable Foundation. In every instance, the Charitable Foundation or the Post shall provide each donor with an appropriate gift acknowledgement letter in accordance with Internal Revenue Code requirements. Funds received will only be used in accordance with the expressed intentions and limitations, if any, imposed by the donor. The Charitable Foundation **shall not** enter into or accept any grant if the terms or conditions of such grant would impose any significant restriction on the operations or activities the Post or with respect to the maintenance of the historic Headquarters Building **unless** the Charitable Foundation first obtains the written consent of the Post, which consent may be withheld, conditioned or delayed in the sole discretion of the Post.
8. Segregation of Assets and Liabilities.  
Other than the transfer of the historic Headquarters Building from the Post to the Charitable Foundation, it is not anticipated that the Post will make any donation or grants to or investment in

the Charitable Foundation. The Post will not be liable for any debts or obligations of the Charitable Foundation and will not be called upon to guarantee payments or performance by the Charitable Foundation.

One or more separate bank accounts will be established in the name of the Charitable Foundation (and with the Charitable Foundation's federal identification number) at a bank and branch as determined by the Charitable Foundation into which all funds belonging to or intended for the Charitable Foundation will be deposited. All other assets of the Charitable Foundation will similarly be held in the name of the Charitable Foundation.

Neither the Post nor the Charitable Foundation shall be liable for any debts or obligations of the other. Neither the Post nor the Charitable Foundation shall have a right to or claim or interest in the net income or assets of the other except for the limited rights to receive reimbursements of certain expenses as expressly provided by this Affiliation Agreement. All materials, supplies and equipment purchased by or on behalf of the Charitable Foundation and not intended for the Post pursuant to this Affiliation Agreement will be owned solely by the Charitable Foundation.

9. Accounting.

The Charitable Foundation has adopted a fiscal year for accounting period ending on March 31<sup>st</sup> of each year and shall maintain its financial records on a cash basis. The Charitable Foundation shall not change its accounting period or method of accounting during the term of this Affiliation Agreement without the prior written consent of the Post which consent may be withheld or conditioned in the sole discretion of the Post. Notwithstanding the foregoing, it is understood and agreed that the Charitable Foundation will be primarily responsible for maintaining its own financial records and preparing its own financial statements but that staff of the Post may assist the Charitable Foundation with such activities. The Post and the Charitable Foundation will each maintain financial records and documentation of receipts and expenses in accordance with applicable laws regulations and good accounting practices.

10. Direct Expenses.

The Charitable Foundation shall be solely responsible for and the Charitable Foundation shall either pay or reimburse the Post for costs advanced by the Post on behalf of the Charitable Foundation with respect to any and all "direct costs" of the Charitable Foundation's programs and activities, general administration and fundraising. The Post shall have no liability for and shall not be called upon to underwrite any direct expenses of the Charitable Foundation but may, from time to time do so for convenience purposes, in which case the Post shall be entitled to reimbursement from the Charitable Foundation.

For purposes of this Section 10, "direct costs" of the Charitable Foundation are expected to include, but are not necessarily limited to, the following:

- All costs associated with the purchase or lease of office materials, supplies and equipment to the extent that such are used solely in connection with the programs, general administration or fundraising activities of the Charitable Foundation;
- All costs to preserve, restore, upgrade, improve and maintain the historic Headquarters Building including its improvements and fixtures;
- All fees and expenses of independent contractors and consultants involved in the programs, general administration of fundraising activities of the Charitable Foundation including legal and accounting expenses;
- All grants made or financial assistance provided by the Charitable Foundation;
- Reimbursement of reasonable expenses of meals, travel and lodging incurred by persons, including Charitable Foundation Board members, acting on behalf of the Charitable

Foundation, where such expenses are directly related to the programs, general administration or fundraising activities of the Charitable Foundation;

- All costs of licenses and governmental fees resulting from the Charitable Foundation's programs, corporate existence or fundraising activities; and
- All bank account and credit card processing fees.

11. Indirect Expenses.

Unless otherwise specifically agreed to by the Charitable Foundation, in its reasonable discretion and except as otherwise provided in this Section 11, the Charitable Foundation shall not be liable to the Post to reimburse the Post for any indirect expenses incurred or paid by the Post even though such indirect expenses may benefit the Charitable Foundation or the Charitable Foundation's programs, administration or fundraising activities. For purposes of this Section 11, "indirect expenses" include but are not limited to the Post's personnel expenses, occupancy expenses, information technology expenses, office expenses and insurance expenses. It is not presently expected that the Charitable Foundation will have any employees or personnel costs or other indirect expenses of its own. Notwithstanding the foregoing, the Charitable Foundation shall reimburse the Post for a portion of the premium cost of the directors and officers liability insurance covering the Post and the Charitable Foundation on a pro rata basis with such cost allocated between the Post and the Charitable Foundation on the basis of their respective total revenues.

12. Services to be Provided by the Post.

The Post shall provide the Charitable Foundation with general and specific guidance and assistance in conducting its activities, operations, receipt of funds, holding and use of assets, and expenditure of funds, each as provided under the terms of this Affiliation Agreement. Without limiting the foregoing, the Post shall permit the Charitable Foundation to use the Post's post office box for the purpose of receiving mail and will forward to the Charitable Foundation all mail received that is intended for the Charitable Foundation.

The Post shall arrange for insurance coverage of the Charitable Foundation for casualty and general liability insurance and director and officer liability insurance either as an insured, as a "subsidiary" of the Post where the Post is the insured or as an additional insured under such insurance policies of the Post.

13. Limitations on Actions by the Parties on Behalf of the Other Foundation.

Nothing contained in this Affiliation Agreement shall constitute the naming of the Post or the Charitable Foundation as an agent or legal representative of the other for any purposes whatsoever except as specifically and to the extent expressly set forth herein. This Affiliation Agreement shall not be deemed to create any relationship of agency, partnership or joint venture between the parties hereto.

Neither party shall have the authority and shall not enter into contracts for the purchase of services, supplies, materials or equipment on behalf of the other party. Such contracts shall be entered into by the officers of either the Post or the Charitable Foundation in the name of such organization as authorized and directed (either specifically or pursuant to a general authority) by the Board of Directors of such organization and shall not be binding upon or attempt to bind the other organization.

14. Limitation on Actions Taken by the Parties.

The Post shall avoid and shall **not** take any action that would jeopardize the Charitable Foundation's corporate, nonprofit or tax-exempt status or otherwise materially harm or jeopardize

the Charitable Foundation's public image, its relationships with its member, donors and grant makers, or its ability to carry out its mission or ability to complete its projects and activities.

The Charitable Foundation shall avoid and shall **not** take any action that would jeopardize the Post's corporate, nonprofit or tax-exempt status or otherwise materially harm or jeopardize the Post's public image, its relationships with its members, donors and grant makers, or its ability to carry out its mission or ability to complete its projects and activities.

The Charitable Foundation shall avoid becoming a "private foundation" as such term is defined in the Internal Revenue Code.

15. Term and Termination.

The term of this Affiliation Agreement shall be from the Effective Date until terminated by either party on not less than ninety (90) days' prior written notice (including by e-mail) to the other party. Unless otherwise agreed upon by the parties, any such termination shall be effective as of March 31<sup>st</sup> following the expiration of such 90-day notice period. The provisions of Section 16 shall continue to be binding after any termination of this Affiliation Agreement.

Upon any termination of this Affiliation Agreement, the Post and the Charitable Foundation will develop and follow such processes and procedures as may be necessary or appropriate to transition from the arrangement called for by this Affiliation Agreement to one in which the Charitable Foundation is acting solely on its own.

16. Confidentiality and Return of Property.

Any property of the Post or the Charitable Foundation, information regarding the Post or the Charitable Foundation including its corporate and financial books and records which is received by or compiled by the other party during the term of this Affiliation Agreement, and all records and papers of any kind relating to the Post or the Charitable Foundation received by the other party or created by the other party in the performance of this Affiliation Agreement shall be the exclusive property of the Post or the Charitable Foundation and shall be held or used by the other party solely for the benefit of the first party and will be returned to the first party as soon as is practicable after the termination of this Affiliation Agreement. Notwithstanding the foregoing, the Post or the Charitable Foundation may keep copies of such information, books and records and papers of the other party as may be necessary or appropriate in their reasonable determination. Nothing in this Affiliation Agreement shall preclude the Post the Charitable Foundation from disclosing information regarding the other party (financial or otherwise) to the extent that the first party, in its reasonable determination, determines that such disclosure is necessary or required by federal, state or local law or necessary or required under the terms of any grant awarded to either party. Furthermore, the Post or the Charitable Foundation may disclose information regarding the other party to officers and directors of the first party, officers and directors of the other party, persons employed by the either party, consultants to either party to the extent that such disclosure is necessary or appropriate in connection with the services provided under this Affiliation Agreement or such disclosure is necessary or appropriate for either party to perform its programs, activities or general operations; provided, however, in each instance, the person to whom such information is disclosed is subject to a similar duty of confidentiality. Nothing contained in this Section 16 shall apply to information that is publicly available through no fault or wrongdoing of the Post or the Charitable Foundation.

17. Notices.

All notices required or permitted to be given under this Affiliation Agreement shall be in writing, sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

To the Post: Estes Park Post 119, American Legion  
Attn: Loren J. Shriver, Commander  
P.O. Box 127  
Estes Park, Colorado 80517

To the Charitable Foundation: The Estes Park Post 119 Charitable Foundation  
Attn: Daniel R. Scace, President  
P.O. Box 127  
Estes Park, Colorado 80517

Either party may, by notice in writing to the other party, change the address to which notices to that party are to be given.

18. Assignment.

Neither party may assign its rights or obligations under this Affiliation Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld.

19. Arbitration.

Any controversy or claim arising out of or relating to this Affiliation Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules including the Optional Rules for Emergency Measures of Protection, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any such arbitration shall take place in Estes Park, Colorado. The prevailing party, as determined by the arbitrator, shall be entitled to an award of reasonable attorney fees. The arbitration proceedings shall be conducted by a single arbitrator, in privacy, and, except to the extent necessary to enforce any award, the proceedings and their results shall be confidential.

20. Modification.

Any modification of this Affiliation Agreement must be in writing and signed by both parties.

21. Governing Law, Severability, Jurisdiction and Venue.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Affiliation Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution. The provisions of this Affiliation Agreement are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the parties can continue to perform their obligations under this Affiliation Agreement in accordance with its intent. All suits or actions related to this Affiliation Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the County of Larimer.

- 22. Construction Against Drafter.  
In the event of an ambiguity in this Affiliation Agreement the rule of contract construction that ambiguities shall be construed against the drafter shall not apply and the parties hereto shall be treated as equals and no party shall be treated with favor or disfavor.
- 23. No Third Party Beneficiaries.  
This Affiliation Agreement is entered into between the Post and the Charitable Foundation and is solely for the benefit of those two parties and does not create any rights or responsibilities to any third parties.
- 24. Waiver.  
Waiver of any breach under a term, provision, or requirement of this Affiliation Agreement or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.
- 25. Entire Agreement.  
This Affiliation Agreement, together with the Lease Agreement by and between the parties and dated as of this same date, represent the complete integration of all understandings between the parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

IN WITNESS WHEREOF, this Affiliation Agreement has been executed by the parties as of the day and year first above written.

**THE ESTES PARK POST 119,  
AMERICAN LEGION**

**ESTES PARK POST 119  
CHARITABLE FOUNDATION**

By: \_\_\_\_\_  
Loren J. Shriver, Commander

By: \_\_\_\_\_  
Daniel R. Scace, President