

# **DECLARATION OF TRUST**

**For**

## **ARIZONA CHARITIES POOLED TRUST**

**CREATING THE ARIZONA CHARITIES POOLED TRUST**

**(A SELF-SETTLED POOLED SPECIAL NEEDS TRUST)**

*Protection for personal injury recoveries; inheritance distributions; insurance proceeds; domestic relations payments; and other funds*

Charities Pooled Trust  
1217 Ponce de Leon Blvd.  
Clearwater, FL 33756

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# DECLARATION OF TRUST

## FOR THE

### ARIZONA CHARITIES POOLED TRUST

THIS DECLARATION OF TRUST is made this 16<sup>th</sup> day of August 2010, by Charities Pooled Trust, a Florida not for profit corporation (herein referred to as "Non-Profit"). The Non-Profit is the Declarant and Settlor of this Trust.

## ARTICLE ONE ESTABLISHING THE TRUST

### SECTION 1.1 NAME OF THE TRUST

The Trust established by this Declaration shall be known as the Arizona Charities Pooled Trust ("Trust").

### SECTION 1.2 TYPE OF TRUST

The Settlor hereby establishes the Trust as a discretionary master pooled self settled special needs trust pursuant to 42 U.S.C. §§ 1382b(c)(1)(C)(ii)(IV) and 1396p(d)(4)(c), and A.R.S. § 36-2934.01 in compliance with the requirements for a qualified pooled self settled special needs trust under federal and state law, which are hereby incorporated by reference into this Declaration of Trust.

### SECTION 1.3 IRREVOCABILITY

This Declaration of the Trust and the Trust created herein shall be irrevocable.

### SECTION 1.4 DEFINITIONS

Definitions of the terms used in this Declaration of Trust and the Trust created herein are described in alphabetical order in Section 11.13 of Article Thirteen below.

### SECTION 1.5 TRUST INTENT

It is the intent of the Non-Profit, as Settlor of the Trust, to comply with all applicable federal and state laws and regulations related to and governing pooled trusts for persons with disabilities, including, but not limited to, 42 U.S.C. §§ 1382b(c)(1)(C)(ii)(IV) and 1396p(d)(4)(c), and A.R.S. § 36-2934.01.

### SECTION 1.6 TRUST PURPOSE

The purpose of the Trust is to provide a discretionary, safe and effective method for disabled individuals to benefit from their assets while retaining eligibility for Government Assistance benefits. The Trust provides a discretionary, safe and effective system for the receipt, administration, management, and investment of assets held in an Individual Benefit Account ("IBA") for each Trust Beneficiary and the discretionary disbursement of such assets for the sole benefit of such Trust Beneficiary without causing the Trust Beneficiary to lose eligibility for Government Assistance benefits.

## ARTICLE TWO PARTIES

### SECTION 2.1 CHARITABLE ORGANIZATION

The Non-Profit is a Florida not for profit corporation and a tax exempt charitable organization. It has established this Trust and manages it as required by applicable federal and state law.

### SECTION 2.2 TAX EXEMPT

The Non-Profit has been granted tax exempt status by the Internal Revenue Service (IRS) under Internal Revenue Code (IRC) Section 501(c)(3).

### SECTION 2.3 TRUSTEE

#### A. APPOINTMENT OF TRUSTEE

The Non-Profit shall be the initial trustee. Although the Non-Profit has established and manages the Trust, the Non-Profit may appoint an independent corporate trustee to serve as Trustee. If the Non-Profit appoints an independent corporate trustee as Trustee, the Trustee is acting as agent and trustee for the benefit of the Non-Profit to custody and administer trust assets contained in individual benefit accounts pursuant to instructions that are for the sole benefit of the Beneficiaries participating in the Trust and that are in accordance with the terms of the Declaration of Trust and not contrary to state or federal law. The Trustee shall be responsible for oversight for the custody, investment asset allocation model selection and disbursement of funds contributed to the Trust for each Trust Beneficiary. Any Trustee appointed by the Non-Profit shall accept the role as a Trustee in the manner provided by applicable state law.

#### B. REMOVAL OF TRUSTEE

The Non-Profit reserves the right to remove any Trustee and retain or engage another independent corporate trustee or appoint itself as Trustee or Successor Trustee.

### SECTION 2.4 INVESTMENT ADVISOR

#### A. APPOINTMENT OF INVESTMENT ADVISOR

Although the Non-Profit has established and manages the Trust, the Non-Profit may retain an independent Investment Advisory Firm as the Investment Advisor responsible for the custody of the assets, risk assessment for each Trust Beneficiary, investment and asset allocation selection and management in accordance with investment objectives established for each IBA, cash management, investment performance analysis, written investment performance reports, written account statements of activities and asset values, and annual summary of account information for each IBA and Trust Beneficiary.

#### B. REMOVAL OF INVESTMENT ADVISOR

The Non-Profit reserves the right to remove any Investment Advisor and retain another Investment Advisory Firm or itself as Investment Advisor.

## **SECTION 2.5 ADMINISTRATOR**

### **A. APPOINTMENT OF ADMINISTRATOR**

Although the Non-Profit has established and manages the Trust, the Non-Profit may retain an independent administrator as Administrator to assist and support the Non-Profit's disbursement governance and administration management activities for each Trust Beneficiary and his or her Individual Benefit Account ("IBA").

### **B. REMOVAL OF ADMINISTRATOR**

The Non-Profit reserves the right to remove any Administrator, and retain another independent administrator or itself as Administrator.

## **SECTION 2.6 TRUST INVESTMENT ARCHITECTURE**

The Non-Profit uses specific investment platforms and asset allocation models ("Investment Vehicles") to meet the short term and long term discretionary, supplemental and special needs of each Trust Beneficiary. The Investment Vehicles have been reviewed for their appropriateness by the Trustee and Investment Advisor. The funds in a Trust Beneficiary's IBA will be invested in an Investment Vehicle appropriate for the Trust Beneficiary. The Trustee will periodically review the investments of the Investment Advisor in each asset allocation model. The Non-Profit, Trustee, Investment Advisor, and Administrator shall not be responsible for any losses or reductions in value of the assets contained in a Trust Beneficiary's IBA.

# **ARTICLE THREE JOINDER AGREEMENT**

## **SECTION 3.1 EXECUTION OF JOINDER AGREEMENT**

To join and benefit from this Trust, the Grantor is required to sign a Joinder Agreement. By the Grantor's execution of the Joinder Agreement, the Grantor agrees to and accepts the terms of the Trust. Any special instructions for the benefit of the Trust Beneficiary should be described in the Joinder Agreement.

## **SECTION 3.2 GRANTOR'S INTENT IN EXECUTING JOINDER AGREEMENT**

In making contributions to the Trust, it shall not be the intention of any Grantor to displace any Government Assistance benefits that may otherwise be available to the Trust Beneficiary. It shall be the specific intention of all Grantors to establish a discretionary, supplemental fund pursuant to 42 U.S.C. §§ 1382b(c)(1)(C)(ii)(IV) and 1396p and to limit the discretionary disbursements solely for the benefit of the Trusted Beneficiary and his or her supplemental care and supplemental needs as is consistent with A.R.S. § 36-2934.01.

## **SECTION 3.3 IRREVOCABILITY OF JOINDER AGREEMENT**

Subject to approval by the Non-Profit and subject to the provisions of Section 3.6 below, this Trust shall be effective against a specific individual seeking to become a Trust Beneficiary upon Grantor's execution of a Joinder Agreement and contribution of property or money ("assets") to the Trust. An individual seeking to become a Trust Beneficiary shall have completed enrollment when: (1) The Joinder Agreement is approved by the Non-Profit; (2) the assets contributed to the Trust are received by the Trustee; (3) the Trustee accepts the contributed assets; and (4) the Trustee establishes or creates for the individual an Individual Benefit Account ("IBA") with the contributed assets; (5) the disabled individual has complied with Section 3.6 below. Upon completed enrollment, the individual enrolling and joining in the Trust becomes a Trust Beneficiary of this Trust and the following becomes effective:

- 1) Joinder Agreement, Termination Agreement, and IBA created for the Trust Beneficiary shall become irrevocable as to such Grantor and Trust Beneficiary;
- 2) Contributed assets shall not be refundable to the Grantor except as otherwise provided in the Section Three of the Termination Agreement;
- 3) Grantor and Trust Beneficiary shall have no further interest in, and do relinquish and release all right, control over, incidents of ownership and interest of any kind or nature in and to, the assets (including any and all assets subsequently contributed to the Trust Beneficiary's IBA) and the IBA said assets are contributed into; and
- 4) Non-Profit shall administer the Trust Beneficiary's IBA for the sole benefit of the Trust Beneficiary in accordance with this Declaration of Trust, the Trust Beneficiary's Joinder Agreement and Termination Agreement.

### **SECTION 3.4 JOINDER AGREEMENT AND COURT RETAINING JURISDICTION**

For an Individual Benefit Account under the continuing jurisdiction of a court, the Trust Beneficiary's Joinder Agreement and Termination Agreement will incorporate any order from such court and the terms of such order shall supersede any terms of the Joinder Agreement, Termination Agreement or Declaration of Trust that are inconsistent with such order.

### **SECTION 3.5 PARTICIPATION OF INDIVIDUAL NOT DETERMINED DISABLED**

If the Social Security Administration or any other authorized federal or state governmental entity has not made a determination that an individual seeking to enroll as a Trust Beneficiary of this Trust is a disabled person, or otherwise qualifies as disabled pursuant to AHCCCS Eligibility Policy and Procedure Manual MS 804..01.B, the Non-Profit is authorized to accept such individual as a Trust Beneficiary if the Non-Profit believes that such individual is (1) a disabled person, or (2) will be determined to be a disabled person by the appropriate federal or state governmental entity.

### **SECTION 3.6 STRUCTURED SETTLEMENTS**

If the disabled individual named in the Joinder Agreement as the Trust Beneficiary is involved in a structured settlement, in order for the disabled individual to complete enrollment the disabled individual must obtain, and provide to the Non-Profit and Trustee, a commutation rider providing for a lump sum payout upon the death of the Trust Beneficiary with the State where the Trust Beneficiary resides being the first beneficiary up to the amount of the state's Medicaid claim.

## **ARTICLE FOUR INDIVIDUAL BENEFIT ACCOUNT**

### **SECTION 4.1 IRREVOCABLE CONTRIBUTION**

The assets contributed to an Individual Benefit Account ("IBA") established herein are irrevocably assigned, transferred, conveyed and delivered to the Trustee to be used for the sole benefit of the Trust Beneficiary and as set forth in this Declaration of Trust through the Trust created herein.

## **SECTION 4.2 WHEN CONTRIBUTION BECOMES IRREVOCABLE**

Upon delivery to and acceptance by the Trustee of the assets contributed for deposit into a Trust Beneficiary's IBA, the contributed assets shall be irrevocably contributed and non-refundable. Acceptance by the Trustee is indicated by the deposit of the contributed assets into an IBA.

## **SECTION 4.3 EFFECTIVE DATE OF AN INDIVIDUAL BENEFIT ACCOUNT**

The effective date of a Trust Beneficiary's IBA is the date the executed Joinder Agreement is approved by the Non-Profit, subject to delivery to the Non-Profit of all Required Documents. If any Required Documents are not received by the Non-Profit, then the Non-Profit may invalidate the Joinder Agreement and not accept the contributed assets. If the Joinder Agreement is invalidated, no IBA will be established for an individual and the individual will not become a Trust Beneficiary of the Trust.

## **SECTION 4.4 MANAGEMENT OF INDIVIDUAL BENEFIT ACCOUNTS**

Assets contributed on behalf of a Trust Beneficiary shall be invested, re-invested and administered in an IBA in the name of the Trust Beneficiary. The assets in all of the Individual Benefit Accounts may be pooled together for investment and management purposes, but each IBA will remain in a separate account. The Trustee may, in its sole and absolute discretion, disburse all or a portion of the assets in a Trust Beneficiary's IBA for the sole benefit of a Trust Beneficiary, subject to A.R.S. § 36-2934.01.

## **SECTION 4.5 EFFECT OF CONTRIBUTION**

Specifically subject to and subordinate to Section 7.13 of Article Seven herein, and to the Non-Profit's and Trustee's sole and absolute discretion in making disbursements, the total disbursements made on behalf of a Trust Beneficiary shall not exceed the total of all contributions made to such Trust Beneficiary's IBA, plus any undistributed income.

## **SECTION 4.6 FUTURE TRANSFER OF ASSETS**

Property, or interests in property, may be designated for future transfer by a Grantor as a contribution of assets to the IBA of a Trust Beneficiary. Such designated contributions may be revoked by the Grantor at any time during that Grantor's lifetime and continued competence, provided the Grantor gives prior written notice to the Non-Profit and Trustee., or as otherwise provided or required by a court retaining jurisdiction over a Trust Beneficiary's IBA.

## **SECTION 4.7 EFFECT OF DESIGNING A FUTURE TRANSFER**

The Trustee shall not consider future designations of property, as provided in Section 4.6, Article Four, to be a contribution of assets to a Trust Beneficiary's IBA until such designated property has actually been contributed to the Trust and accepted by the Trustee. The Trustee shall not credit any such future designation of property to a particular Trust Beneficiary's IBA until such designated property has been accepted by the Trustee.

## **SECTION 4.8 IBA COUNSEL FOR AN INDIVIDUAL BENEFIT ACCOUNT**

By the Grantor's execution of the Joinder Agreement and the Trust Beneficiary's completed enrollment in the Trust, the Non-Profit and Trustee are expressly authorized, in their sole and absolute discretion, to (1) retain an attorney at law as "IBA Counsel" to provide legal services as may be required or permitted in this Declaration of Trust, Joinder Agreement, or Termination Agreement, to assist the Non-Profit and Trustee in matters involving (a) the administration of the Trust Beneficiary's IBA; or (b) the court's continuing jurisdiction over a Trust Beneficiary's

IBA , and (2) pay the IBA Counsel his or her reasonable attorney's fees and costs for such legal services from the Trust Beneficiary's IBA, subject to approval by AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS unless not required by future laws or regulations. Notwithstanding the foregoing authority, neither the Non-Profit nor Trustee is required to retain an IBA Counsel.

#### **SECTION 4.9 DETERMINATION OF TAX STATUS OF AN IBA**

Neither the Non-Profit, Trustee, Administrator nor the Investment Advisor make any claim, warranty, statement, or opinion, either expressly or impliedly, about the tax status of any Trust Beneficiary's IBA. The Non-Profit or Trustee may, but are not required to, retain an attorney at law as an IBA Counsel or other appropriate person to determine the tax status of a Trust Beneficiary's IBA. Regardless of whether or not the Non-Profit or Trustee obtain such determination, the Beneficiary Advocate should obtain independent tax advice to determine the tax status of a Trust Beneficiary's IBA, and reporting obligations with respect to same.

### **ARTICLE FIVE BENEFICIARY ADVOCATE**

#### **SECTION 5.1 NAMING OF BENEFICIARY ADVOCATE**

The Grantor shall name a Beneficiary Advocate and, if possible, a Successor Beneficiary Advocate, in the Joinder Agreement, subject to approval by the Non-Profit. The Grantor may name the Trust Beneficiary to be the Beneficiary Advocate if legally capable or competent. If a Grantor fails to name a Beneficiary Advocate or Successor Beneficiary Advocate in the Joinder Agreement, or if the Non-Profit does not approve of the Beneficiary Advocate or Successor Beneficiary Advocate named by the Grantor, then the Non-Profit may name a Beneficiary Advocate.

#### **SECTION 5.2 SELECTION OF THE BENEFICIARY ADVOCATE**

If legally capable or competent, a Trust Beneficiary may be selected to serve as his or her Beneficiary Advocate, subject to the approval of the Non-Profit. In certain circumstances, the Non-Profit may select someone other than the Trust Beneficiary, preferably the Trust Beneficiary's Legal Representative or some other qualified person, to be the Beneficiary Advocate. A court appointed guardian or conservator of a Trust Beneficiary will be given preference to serve as a Beneficiary Advocate. By the Grantor signing the Joinder Agreement, the Grantor authorizes the Trustee to compensate any Beneficiary Advocate selected or approved by the Non-Profit. Such compensation shall be reasonable based upon the services rendered and the reasonable costs for such services in the community where such services are rendered, subject to approval by AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS, unless not required by future laws or regulations.

#### **SECTION 5.3 ACCEPTANCE BY THE SELECTED BENEFICIARY ADVOCATE**

Each individual selected as a Beneficiary Advocate or Successor Beneficiary Advocate, if any, shall accept such selection by executing a Beneficiary Advocate Acceptance of Duties agreement. Such agreement shall be incorporated herein.

#### **SECTION 5.4 DUTIES OF THE BENEFICIARY ADVOCATE**

The Beneficiary Advocate shall act as an agent of the Trust Beneficiary, with the same authority as an attorney in fact or agent, or legal guardian or conservator, of the Trust Beneficiary, but with the limited additional authority to (1) obtain guidance, findings and assessments regarding the life care of the Trust Beneficiary, (2) act as requested by the Non-Profit or Trustee for the benefit of the Trust Beneficiary, or (3) receive notices from the Non-Profit or

Trustee on behalf of the Trust Beneficiary. The Beneficiary Advocate shall report such guidance, findings and assessments to the Non-Profit and the Trustee. All reasonable requests made by the Non-Profit and Trustee shall be completed by the Beneficiary Advocate.

## **SECTION 5.5 INFORMATION PROVIDED BY BENEFICIARY ADVOCATE**

The Non-Profit, Trustee, Investment Advisor or Administrator may, but are not required to, rely on the guidance, findings and assessments provided by, or actions of, the Beneficiary Advocate as if made by the Trust Beneficiary.

## **SECTION 5.6 REQUESTS POSSIBLY CAUSING REDUCTION OF BENEFITS**

For requests for disbursements that, in the sole and absolute discretion of the Non-Profit or Trustee, may cause a reduction in or loss of the Trust Beneficiary's Government Assistance benefits, the Non-Profit or Trustee may, but is not required to, retain an attorney at law as an IBA Counsel to provide the Non-Profit and Trustee a legal opinion regarding the effect of the requested disbursement upon the Trust Beneficiary's continual eligibility for Government Assistance benefits. The Non-Profit or Trustee may request the IBA Counsel to seek a court order authorizing such disbursement from a court retaining jurisdiction over the Trust Beneficiary or his or her IBA. Notwithstanding such disbursement request, or the legal opinion of the IBA Counsel, the Trustee has sole and absolute discretion to approve or deny such disbursement request and, if approved, to the extent authorized under A.R.S. § 36-2934.01.

## **SECTION 5.7 REMOVAL OF THE BENEFICIARY ADVOCATE**

The Non-Profit or Trustee may remove and replace a Beneficiary Advocate if the Non-Profit believes such Beneficiary Advocate is not acting in the best interest of the Trust Beneficiary. If the Trust Beneficiary's IBA is under the continuing jurisdiction of an applicable court, or if the Beneficiary Advocate is a court appointed guardian or conservator of the Trust Beneficiary, the Non-Profit may retain an attorney at law as an IBA Counsel to obtain a court order to remove and replace such Beneficiary Advocate.

# **ARTICLE SIX DISBURSEMENTS DURING LIFE OF TRUST BENEFICIARY**

## **SECTION 6.1 DISCRETIONARY DISBURSEMENT GUIDELINES**

### **A. DISCRETIONARY DISBURSEMENTS FOR SUPPLEMENTAL CARE OR SUPPLEMENTAL NEEDS**

The Trustee may, in its sole and absolute discretion, approve and disburse any amounts of principal or income, or both, up to the whole thereof, from a Trust Beneficiary's IBA for the Trust Beneficiary's supplemental care or supplemental needs that are not otherwise provided to the Trust Beneficiary through Government Assistance benefits and that are consistent with A.R.S. § 36-2934.01. The Trustee shall take into account that discretionary disbursements are for the sole benefit of the Trust Beneficiary. However, the Trustee is neither obligated nor compelled to approve a disbursement request. Before any discretionary disbursement request is approved and disbursed from a Trust Beneficiary's IBA, the Trustee may consider the consequences of such disbursement on the Trust Beneficiary's eligibility for Government Assistance benefits, but is not required to do so. The Trustee may refuse any request for a disbursement from a Trust Beneficiary's IBA, including, but not limited to, disbursement requests for services that any public or private agency has the obligation to provide to such Trust Beneficiary.

The Trustee shall pay on a monthly basis, the share of cost amount attributed to the trust income and, when legally permissible, all income assigned to the trust shall be direct deposited in an account titled to the trust.

**B. DISBURSEMENTS NOT TO REPLACE GOVERNMENT ASSISTANCE**

No disbursement request should be approved by the Non-Profit or Trustee in excess of the resource and income limitations of any Government Assistance benefits program that the Trust Beneficiary is participating in or is eligible to receive. The Trustee shall not have to approve any disbursement request that disqualifies the Trust Beneficiary from receiving Government Assistance benefits, or supplants or replaces the Trust Beneficiary's Government Assistance benefits, unless the Trustee determines, in its sole and absolute discretion, that the advantage of such disbursement outweighs the Trust Beneficiary's loss of, or ineligibility for, Government Assistance benefits. The Non-Profit, Trustee, Administrator, Investment Advisor, and Beneficiary Advocate selected by the Non-Profit, shall not be responsible or liable, individually, jointly or severally, for any impact, effect or consequence to the Trust Beneficiary arising from the Trustee denying disbursement requests or approving and making disbursements from the Trust Beneficiary's IBA to the extent consistent with A.R.S. § 36-2934.01.

**C. INFORMATION THAT MAY BE TAKEN INTO ACCOUNT**

In approving or denying a disbursement request, or making any disbursement, the Trustee may, but is not required to, take into account the following information about a Trust Beneficiary if it is either actually known by the Trustee or actually provided by to the Trustee:

- i) Other income or resources of such Trust Beneficiary that are reasonably available to such Trust Beneficiary;
- ii) Public or Private Benefits that the Trust Beneficiary is eligible to receive or is currently receiving; and
- iii) Resource and income limitations of any Government Assistance benefits program that the Trust Beneficiary is eligible to apply for or is participating in.

**D. FUTURE NEEDS OF TRUST BENEFICIARY MAY BE TAKEN INTO ACCOUNT**

The Trustee may, but shall not be required to, consider the future needs of a Trust Beneficiary when approving or denying disbursement requests, and making disbursements.

**E. FORM OF DISBURSEMENT**

The Trustee, in its sole and absolute discretion, may make any disbursement from a Trust Beneficiary's IBA in the following manner: (1) Directly to a Trust Beneficiary; (2) in any form allowed by law; (3) to any person deemed suitable by the Trustee; or (4) by direct payment to a third party for the expense incurred by, or service provided to, the Trust Beneficiary. The Trustee may pay directly for services or products permitted under A.R.S. § 36-2934.01, provided the Trust Beneficiary does not receive any asset that can be converted to cash.

**F. IBA CORPUS AND INCOME SPECIFICALLY NOT AVAILABLE**

The corpus of the Individual Benefit Account ("IBA"), also known as the IBA's principal, and income accumulated in an IBA, are specifically not available to any Trust Beneficiary except to the extent of disbursements made by the Trustee for the sole benefit of a Trust Beneficiary.

**G. NOTICE REGARDING GOVERNMENT ASSISTANCE BENEFITS**

The Grantor, Trust Beneficiary and the Trust Beneficiary's Beneficiary Advocate shall notify the Non-Profit and Trustee whenever a Government Assistance Benefits Event occurs. A Government Assistance Benefits Event occurs whenever the Trust Beneficiary: (a) Applies for Government Assistance benefits; (b) has an application for Government Assistance benefits approved or denied; or (c) has Government Assistance benefits terminated. Such notice shall be in writing, delivered by certified mail, return receipt requested, to the Non-Profit and/or Trustee, at the address provided for such notices in Section 7.8 of Article Seven, of the Trust Beneficiary's Joinder Agreement, or at such other address as the Non-Profit or Trustee may designate from time to time. Such notice shall be provided to the Non-Profit and Trustee within five (5) business days from the earliest date that the Grantor, Trust Beneficiary or his or her Beneficiary Advocate, knows that a Government Assistance Benefits Event has occurred. Neither the Non-Profit nor the Trustee shall be responsible or liable for any consequence to the Trust Beneficiary arising from making a disbursement decision before receiving actual notice that a Government Assistance Benefits Event occurred. After the Non-Profit and Trustee actually receive notice that a Government Assistance Benefits Event occurred, all disbursement request decisions by the Trustee shall be subject to this Section 6.1, Article Six of this Declaration of Trust.

**H. NO LIABILITY FOR DISBURSEMENTS**

The Non-Profit, the Trustee, the Administrator, the Investment Advisor, and Beneficiary Advocate selected by the Non-Profit, shall not be liable, individually, jointly or severally, to the Grantor, Trust Beneficiary, his or her Beneficiary Advocate, or any other third party, for any disbursement made from the Trust Beneficiary's IBA that reduces or terminates the Government Assistance benefits received by the Trust Beneficiary or makes the Trust Beneficiary ineligible for Government Assistance benefits.

**I. CONSEQUENCES OF PAST DISBURSEMENT DECISIONS**

All past decisions about disbursement requests by the Trustee, regardless of the reason for such decisions, shall not serve, or be construed, as a pattern, precedent or past conduct, that establishes a duty upon the Trustee to continue making such decisions about disbursement requests. The Trustee is under no duty to make future disbursement decisions based upon past disbursement decisions.

**SECTION 6.2 LEGAL OPINION ABOUT IMPACT OF DISBURSEMENT**

If the Non-Profit or Trustee deem it necessary, the Non-Profit or Trustee may retain an attorney at law as an IBA Counsel to provide a legal opinion regarding (1) the impact or consequence of approving and making or denying any disbursement request on the Trust Beneficiary's eligibility for Government Assistance benefits; or (2) the administration of the Trust Beneficiary's IBA. Furthermore, the Trustee may request the IBA Counsel to seek an order (1) approving a disbursement decision; or (2) for any other appropriate relief regarding the administration of the Trust Beneficiary's IBA, from a court of competent jurisdiction. The Trustee is authorized to pay the IBA Counsel's reasonable attorney fees and costs for providing such legal services from the Trust Beneficiary's IBA, subject to approval by AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS, unless not required by future laws or regulations.

**SECTION 6.3 TRUSTEE'S DISCRETION FOR DISBURSEMENTS**

The Trustee has sole and absolute discretion in approving or denying any disbursement request, and making a disbursement of principal or income, or both, from a Trust Beneficiary's IBA to the extent permitted under A.R.S. § 36-2934.01. The Trustee may allocate all disbursements between principal and income as the Trustee determines in its sole and absolute discretion. The Trustee is neither obligated nor compelled to approve or deny a disbursement request or make a disbursement. The judgment of any other person or entity shall not be

substituted for the judgment of the Trustee in its exercise of discretion in approving or denying a disbursement request or in making a disbursement.

#### **SECTION 6.4 SCOPE OF TRUST BENEFICIARY'S INTERESTS**

This Trust shall be for the benefit of the Primary Trust Beneficiary. Distributions from this Trust shall only be for the benefit of the Primary Trust Beneficiary. Any discretionary right to use principal shall include the right to exhaust principal for such purpose. The Trustee shall not be required to distribute income currently, and no beneficiary shall have any right to compel the Trustee to make any discretionary payment or expenditure. The Trustee shall not be held accountable to any beneficiary if part or the entire principal shall be depleted as a result of distributions under this Trust in accordance with the terms of this Trust. Any income not distributed shall be added to and become part of the principal.

Any determination made by the Trustee in good faith as to the manner in which or the extent to which the powers granted by this Trust shall be exercised shall be binding conclusive upon all persons who might then or thereafter have or claim any interest in the Trust Property.

#### **SECTION 6.5 TRUST NOT LIABLE FOR FAILING TO IDENTIFY RESOURCES**

The Non-Profit, Trustee, Investment Advisor, Administrator, and Beneficiary Advocate selected by the Non-Profit, shall not be liable, individually, jointly or severally, to any Trust Beneficiary or any other third party, for failing to identify any program or resource available to such Trust Beneficiary because of his or her disabilities. As evidenced by the execution of the Joinder Agreement, the Grantor, Trust Beneficiary and, if applicable, the Beneficiary Advocate and Successor Beneficiary Advocate, as appropriate, recognize, understand and acknowledge the uncertainty and changing nature of the guidelines, laws and regulations pertaining to Government Assistance benefits and agree that the Non-Profit, Trustee, Investment Advisor, Administrator, and Beneficiary Advocate appointed by the Non-Profit, if applicable, shall not be responsible or liable, individually, jointly or severally, for causing a period of disqualification or ineligibility for Government Assistance benefits for a Trust Beneficiary. In addition, the Non-Profit, Trustee, Investment Advisor, Administrator, and Beneficiary Advocate appointed by the Non-Profit, if applicable, shall not in any event be liable, individually, jointly or severally, for any loss of benefits by a Trust Beneficiary as long as they, individually, jointly or severally, acted in good faith. It remains the responsibility of the Grantor and Trust Beneficiary, and Beneficiary Advocate to: (1) Seek out and apply for appropriate Government Assistance benefits; and (2) provide all proper documentation and information necessary and required to qualify the Trust Beneficiary, and maintain the Trust Beneficiary qualified, for any such Government Assistance benefits.

### **ARTICLE SEVEN IBA ADMINISTRATIVE PROVISIONS**

#### **SECTION 7.1 TRUST BENEFICIARY INDIVIDUAL BENEFIT ACCOUNT**

A separate Individual Benefit Account ("IBA") shall be established, administered and maintained for the sole benefit of each Trust Beneficiary enrolled in the Trust. However, for purposes of investment and management of assets contained in each IBA, the Trustee may pool all of the assets contained in the IBAs for investment and management purposes while separately administering and maintaining each Trust Beneficiary's IBA. The Trustee or Investment Advisor shall maintain records showing the increases and decreases in value of each Trust Beneficiary IBA. The Trustee shall maintain records showing the assets contributed or disbursed from each Trust Beneficiary's IBA.

## SECTION 7.2 FEES AND EXPENSES

The fees and expenses for enrolling a Trust Beneficiary and creating an IBA for the Trust Beneficiary (“Enrollment Fee”), and for annually administering and maintaining each Trust Beneficiary’s IBA (“Annual Administration Fee”) shall be initially assessed in accordance with the written fee schedule for the Non-Profit in effect at the time the Trust Beneficiary completes enrollment. All subsequent assessments of the Annual Administration Fee and Termination Fee, if any, shall be assessed in accordance with the written fee schedule in effect at the time the Annual Administration Fee or Termination Fee is assessed. The Trust Beneficiary may be assessed other fees and expenses (“Other Fees”) as provided in the Declaration of Trust, Joinder Agreement, Termination Agreement, Participant Fee Agreement, or other enrollment agreements or documents. The Non-Profit and Trustee may adjust the Enrollment Fee schedule, Annual Administration Fee schedule, Termination Fee schedule or the Other Fees schedule from time to time. All assessed fees, including the Enrollment Fee, Annual Administration Fee, Termination Fee, and Other Fees shall be collected from the Trust Beneficiary’s IBA and disbursed or distributed by the Trustee as appropriate. This Section is subject to approval by AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS, unless not required by future laws or regulations.

## SECTION 7.3 INITIAL IBA VALUATION AND VALUATION DATE

The initial IBA valuation shall occur on the month in which the Trust Beneficiary’s IBA is initially fund with contributed assets. The initial IBA valuation shall be the amount of assets contributed to initially fund the Trust Beneficiary’s IBA. The date on which the Trust Beneficiary’s IBA is initially funded shall be the initial valuation date. The month in which the initial valuation date occurs shall be the initial valuation month.

## SECTION 7.4 ANNUAL VALUATION

The annual valuation date shall be the annual anniversary of the initial valuation month. The annual IBA valuation used to determine the Annual Administration Fee shall be the value of the account balance in the Trust Beneficiary’s IBA on the annual valuation month or the highest account balance in the Trust Beneficiary’s IBA during the prior year, whichever account balance is greater.

## SECTION 7.5 ADJUSTMENTS TO THE VALUATION AMOUNT

Adjustments to the annual valuation amount may be made by the Non-Profit or Trustee, as either may deem necessary.

## SECTION 7.6 PERIODIC REPORT

For accounting purposes, the Trust and each Trust Beneficiary’s IBA thereof shall be operated on a calendar year basis. The Trustee will provide periodic reports, at least annually, to the Non-Profit and to each Trust Beneficiary, or to his or her Beneficiary Advocate if designated to receive such periodic reports. The periodic reports shall show all receipts and disbursements to and from the Trust Beneficiary’s IBA during the previous reporting period. Account statements showing all receipts and disbursements to and from the Trust Beneficiary’s IBA shall be considered a periodic report and satisfy this sections reporting requirement. If the Trust Beneficiary receiving the periodic reports, or his or her Beneficiary Advocate, as appropriate, desires to object to the periodic reports, the time to object (“Objection Time Period”) is thirty (30) days from the date the Trust Beneficiary, or his or her Beneficiary Advocate, as appropriate, receives the periodic reports unless otherwise ordered by a court retaining jurisdiction over the Trust Beneficiary’s IBA. The Trust Beneficiary’s failure, or failure by his or her Beneficiary Advocate, as appropriate, to object within the Objection Time Period shall conclusively be deemed by the Non-Profit and Trustee as an acceptance by the Trust Beneficiary and his or her Beneficiary Advocate, as appropriate, of all matters and transactions set forth in the periodic reports. The Trustee and the Non-Profit may file any periodic

reports, or similar report, with a court of competent jurisdiction when deemed appropriate by the Trustee or the Non-Profit or as ordered by a court retaining jurisdiction over the Trust Beneficiary's IBA. The Non-Profit and Trustee may also provide periodic reports as may be required by applicable state law.

## SECTION 7.7 INSPECTION OF IBA RECORDS

A Trust Beneficiary's IBA records shall be available at all reasonable times and upon reasonable prior written notice by the Trust Beneficiary delivered to the Non-Profit and Trustee. Such notice shall request an inspection of the Trust Beneficiary's IBA records. Neither the Non-Profit nor the Trustee shall be required to furnish Trust records to any individual, corporation or other entity unless ordered by a court with competent jurisdiction, except as provided in this section. Neither the Non-Profit nor the Trustee shall be required to furnish Trust Beneficiary IBA records to any individual, corporation or other entity who is not the Trust Beneficiary, his or her Beneficiary Advocate, or court retaining jurisdiction over the Trust Beneficiary or IBA. When the Trust Beneficiary, or his or her Beneficiary Advocate, provides the appropriate prior written notice or court order, the Non-Profit or the Trustee may furnish the Trust Beneficiary IBA records to any individual, corporation or other entity as so ordered. The determination by the Non-Profit and Trustee as to the sufficiency of any and all written authorizations or notices requesting inspection of a Trust Beneficiary's IBA records shall be final.

A Trust Beneficiary's IBA records may be made available for inspection to the Social Security Administration and the Arizona Health Care Cost Containment System without the approval of the Trust Beneficiary or his or her Beneficiary Advocate for purposes of (1) establishing eligibility of the Trust Beneficiary, (2) proving the compliance of the Trust with any applicable law or regulation, or (3) as otherwise required under Arizona law.

## SECTION 7.8 PREPARATION OF TAX RETURNS AND ELECTIONS

Neither the Non-Profit nor the Trustee shall be responsible for either the preparation or filing of any tax return on behalf of any Trust Beneficiary.

### A. ASSISTANCE THAT MAY BE PROVIDED

Either the Non-Profit or Trustee may, but is not required to, provide assistance to a professional tax preparer to:

- i) Prepare and file any type of tax return, tax form or tax schedule for a Trust Beneficiary;
- ii) Prepare fiduciary income tax returns including making any necessary or appropriate elections in connection therewith;
- iii) Pay a part or all of a Trust Beneficiary's income tax liability that results from income received or generated by the Trust but properly reported on a Trust Beneficiary's income tax return. The assets used to pay any such income tax liability shall be obtained directly from a Trust Beneficiary's IBA and paid directly to the appropriate taxing authority and shall not be available to the Trust Beneficiary. A Trust Beneficiary shall not have any right or interest in any assets used from the Trust Beneficiary's IBA to pay such income tax liability.

### B. EVENT OF TAX REFUND

If a Trust Beneficiary receives a tax refund, any amount refunded to such Trust Beneficiary shall be paid directly to the Trust to the extent such refund is attributable to any amount of income tax liability previously paid by the Trustee. The Non-Profit and Trustee, in their sole and absolute discretion, may deposit such refund into the Trust Beneficiary's IBA.

**C. COOPERATION BY OR ON BEHALF OF TRUST BENEFICIARY**

A Trust Beneficiary, or his or her Beneficiary Advocate, shall execute all letters, powers of attorney or other documents required or requested by the taxing authority, Non-Profit, or Trustee to facilitate payment of any refund to the Trust.

**D. COMPENSATION FOR ASSISTANCE PROVIDED**

The Non-Profit and Trustee, or their agent, if appropriate, shall receive additional compensation and reimbursement of expenses for any assistance provided subject to approval of AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS unless not required by future laws or regulations. Such compensation shall be paid by the Trustee from the IBA for the Trust Beneficiary who was assisted by the Non-Profit or Trustee.

**SECTION 7.9 TAXES AND GRANTOR TRUST STATUS**

In establishing the Trust, it is the intent of the Non-Profit and Trustee that each Trust Beneficiary's IBA be treated as a Grantor Trust for purposes of determining the Trust Beneficiary's tax liability. For the sole purpose of determining such tax liability and having each Trust Beneficiary's IBA treated as a Grantor trust, each Grantor shall have the power to reacquire trust corpus by substituting other property of an equivalent value pursuant to Section 675(4)(C) of the Internal Revenue Code. For purposes of this Section 7.9, "trust corpus" shall have the same meaning as assets in an IBA as used elsewhere throughout this Declaration of Trust. Further, nothing in this Section 7.9 shall in any way affect or modify the intent or purpose of the Trust or any of the provisions found in this Declaration of Trust.

**SECTION 7.10 COSTS OF DEFENDING TRUST**

Fees, costs and expenses of defending any Trust Beneficiary's IBA, including attorneys' fees incurred prior to, during, or after trial, and on appeal, against any claim, demand, legal action, equitable action, suit, or proceeding may, in the sole discretion of the Trustee, be (1) apportioned on a pro rata basis to all Individual Benefit Accounts; or (2) charged only against the Trust Beneficiary IBA that is affected by the action defended against, subject to approval by AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS unless not required by future laws or regulations.

**SECTION 7.11 NO CLAIM ON TRUST ASSETS**

This Trust shall not be reduced in value by any creditor of any Trust Beneficiary. No Trust Beneficiary IBA shall be terminated or made available to a Trust Beneficiary because a creditor of such Trust Beneficiary knows of the existence of this Trust or the assets held in the Trust Beneficiary's IBA.

**SECTION 7.12 TRUST NOT A SUPPORT TRUST**

This Trust is not a support trust. Assets held in Trust Beneficiary IBAs are not intended to be available for the direct support of any Trust Beneficiaries. The Non-Profit and Trustee do not owe any obligation of support to any Trust Beneficiary. No Trust Beneficiary has any right of entitlement or other property right or interest in the principal and income in his or her IBA for his or her direct support.

**SECTION 7.13 ASSETS NOT SUBJECT TO CREDITORS OF TRUST BENEFICIARY**

No part of this Trust or assets in the Trust Beneficiary IBAs shall be: (1) subject to any voluntary or involuntary anticipation or assignment by any Trust Beneficiary; (2) subject to voluntary or involuntary attachment, levy or control by any public or private creditor of any Trust Beneficiary; (3) subject to a taking by legal or equitable

actions, proceedings, suits, or procedures by any voluntary or involuntary creditor, including those who provided services or products to a Trust Beneficiary; and (4) subject to a voluntary or involuntary compelled distribution to any creditor of a Trust Beneficiary. This Section is subject to the Termination Agreement.

## **SECTION 7.14 TERMINATION OF INDIVIDUAL BENEFIT ACCOUNT**

The Termination Agreement for a Trust Beneficiary Individual Benefit Account contains the term relating to the termination of the Trust Beneficiary's Individual Benefit Account.

# **ARTICLE EIGHT TRUST ADMINISTRATIVE POWERS**

## **SECTION 8.1 ADMINISTRATIVE POWERS**

The Non-Profit, Trustee, Investment Advisor and Administrator shall have full power within the scope of their individual duties and responsibilities, subject to any court retaining jurisdiction over a Trust Beneficiary's IBA, to do all acts and things necessary to accomplish the purposes of the Trust and each IBA. The Non-Profit, Trustee, Investment Advisor and Administrator shall perform their respective duties as provided in this Declaration of Trust and all other agreements incorporated herein to receive, hold, manage and control all income and principal in the IBAs and to do such other acts or things concerning the Trust as may be appropriate to effectuate the intent and purpose of the Trust. The power and authority of the Non-Profit, Trustee, Investment Advisor and Administrator shall include, but is not limited to, all of the powers and authority conferred upon them under applicable federal and state laws and regulations. All such laws and regulations are hereby incorporated by reference into this Declaration of Trust. The Non-Profit, Trustee, Investment Advisor and Administrator shall have the authority, within their scope of responsibility, and subject to any court retaining jurisdiction over an IBA, to do the following:

- 1) Subject to A.R.S. § 36-2934.01.B.7(c) the Trustee may invest in non-income producing assets, may invest in housing owned by the Trust jointly with one or more persons to the extent that the ownership interest of any housing owned by the Trust Beneficiary's IBA is equivalent to its equity value in such property;
- 2) Subject to A.R.S. § 36-2934.01, the Trustee may make disbursements or distributions of Trust assets or assets in a Trust Beneficiary's IBA in money or in kind, or partly in money and partly in kind. The judgment and determination of the Trustee of the fair market value on the date of disbursement or distribution, whether or not requiring pro rata disbursement or distribution of specific assets and, whether or not requiring pro rata allocation of the tax basis of such assets disbursed or distributed, shall be binding and conclusive on all interested persons;
- 3) The Trustee may retain any property (whether or not income producing) that may be transferred to the Trust until such time as the Trustee is directed to dispose of such property. However, the Trustee shall not be required to disburse or distribute income producing property to a Trust Beneficiary if it will or may disqualify the Trust Beneficiary from receiving Government Assistance benefits unless the Trustee determines, in the Trustee's sole and absolute discretion, that the advantage of such distribution outweighs the loss of such distribution;
- 4) Subject to approval by a court retaining jurisdiction over a Trust Beneficiary's IBA with advance notice to AHCCCS, unless not required by future laws or regulations, the Trustee may: (a) Borrow money, with the payment of no interest or such interest as the Trustee deems appropriate, for any purpose connected with the protection, preservation, improvement of the Trust, or the enhancement of benefits to the Trust Beneficiaries; or (b) encumber or obtain one or more mortgages on, or pledges of, any part or all of the property held by the Trust whenever the Trustee shall deem it appropriate;

- 5) Subject to approval by AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS, unless not required by future laws or regulations, the Trustee may pay, compromise or adjust any claims or lawsuits of the Trust against others or of others against the Trust as the Trustee shall deem appropriate;
- 6) The Trustee may employ accountants, attorneys, consultants, government benefit specialists and other agents as may be necessary; and from appropriate Trust Beneficiary IBAs or Trust assets compensate them for their services and reimburse them for reasonable and necessary expenses rendered to or on behalf of the Trustee or a Trust Beneficiary, subject to applicable state and federal laws and regulations and approval of AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS, as well as any Court retaining jurisdiction of a Trust Beneficiary's IBA, unless not required by future laws or regulations.
- 7) The Trustee may in its sole and absolute discretion establish additional trusts or transfer a Trust Beneficiary's assets in his or her IBA to another Trust in accordance with 42 U.S.C. § 1396p(d)(4)(C), as the Trustee may deem appropriate and for the sole benefit of the Trust Beneficiary subject to approval of AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS, as well as any court retaining jurisdiction of a Trust Beneficiary's IBA, unless not required by future laws or regulations. A different trustee may be designated for this purpose.
- 8) The Trustee may allow temporary possession and use of available personal property held by the Trust by Trust Beneficiary or the Trust Beneficiary's care giver without requiring any payment therefore;
- 9) The Trustee may make adjustments between principal and income as provided under the laws of the state having jurisdiction over the Trust Beneficiary IBAs;
- 10) The Trustee may disburse assets from a Trust Beneficiary's IBA to compensate for services rendered and to reimburse reasonable and necessary expenses by a Trust Beneficiary's Beneficiary Advocate, IBA Counsel, and other agents engaged from time to time by the Trustee, Trust Beneficiary, or his or her Beneficiary Advocate. Any compensation and reimbursement shall be subject to applicable federal and state laws and regulations and approval of AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS, as well as any Court retaining jurisdiction of a Trust Beneficiary's IBA, unless not required by future laws or regulations.; and

## **SECTION 8.2 ELIGIBILITY OF A TRUST BENEFICIARY**

While the Non-Profit and Trustee are not required to do so, either may retain an attorney at law as an IBA Counsel, or other professional individuals or entities, to assist a Trust Beneficiary to obtain or maintain the eligibility for any and all Government Assistance benefits. The Trustee is authorized to compensate such IBA Counsel and qualified individuals or entities from the Trust Beneficiary's IBA, subject to approval of AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS unless not required by future laws or regulations; however, the Trustee shall not be required to do so. Neither the Non-Profit nor the Trustee shall incur any liability for any unfavorable result regarding the Trust Beneficiary's receipt of or eligibility for Government Assistance benefits.

## **SECTION 8.3 LIMITS OF TRUSTEE'S AUTHORITY**

No authority described in this Trust or available to the Trustee pursuant to applicable law shall be construed to enable the Trustee to purchase, exchange or otherwise deal with or dispose of the assets contained in any Trust Beneficiary's IBA for less than adequate or full consideration in money or money's worth or to enable any person to borrow the assets contained in any Trust Beneficiary's IBA, directly or indirectly, without adequate interest or

security, and approval of any court retaining jurisdiction of a Trust Beneficiary's IBA with advance notice to AHCCCS unless not required by future laws or regulations.

#### **SECTION 8.4 BOND REQUIREMENT**

The Non-Profit and the Trustee are not required to furnish any bond except as may be required by applicable law. If a bond is necessary, the payment of such bond shall be a proper expense of the Trust and paid from the appropriate Trust Beneficiary's IBA.

#### **SECTION 8.5 TRUSTEE MAY SEEK COURT ORDER**

Either the Non-Profit or Trustee may retain an attorney at law as an IBA Counsel to obtain a court order on matters relating to the construction and administration of the Trust or of a Trust Beneficiary's IBA. The Trustee is authorized to pay such IBA Counsel from the Trust or from affected Trust Beneficiary IBAs, as appropriate, subject to approval by AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS, unless not required by future laws or regulations.

#### **SECTION 8.6 COMPENSATION**

The Non-Profit, Trustee, Administrator, and Investment Advisor shall be compensated for services rendered and reimbursed reasonable expenses incurred on behalf of the Trust or a Trust Beneficiary ("Fees") for services provided in this Declaration of Trust, Joinder Agreement and Termination Agreement. The Trustee has the authority to pay the Fees to the Non-Profit, Trustee, Administrator, and Investment Advisor directly from a Trust Beneficiary's IBA. The Non-Profit, Trustee, Administrator, and Investment Advisor, shall also be authorized to receive additional compensation for services and expenses neither contemplated by the Parties at the time the Trust Beneficiary completed enrollment nor provided for in this Declaration of Trust, Joinder Agreement or Termination Agreement. Notwithstanding any agreement to the contrary, the Non-Profit may modify all fee schedules and agreements because of changes in the Trust's economic and general circumstances. This Section is subject to approval by AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS, unless not required by future laws or regulations.

#### **SECTION 8.7 TRUST DEFENSE COSTS AND EXPENSES**

The costs and expenses of defending the Trust or Trust Beneficiary IBA from any claim, demand, legal or equitable action, suit or proceeding may, in the sole and absolute discretion of the Trustee, be: (a) charged on a pro rata basis to all Trust Beneficiary IBAs; or (b) charged only against the IBAs of the affected Trust Beneficiaries. The Trustee, in its sole and absolute discretion, shall determine whether defense costs affect a substantial number of Trust Beneficiary IBAs and warrant allocation among all Trust Beneficiary IBAs or whether the issue requiring defense of the Trust is limited to a single Trust Beneficiary's IBA or only to certain Trust Beneficiary IBAs, warranting allocation only to such Trust Beneficiary IBAs. Defense costs shall also include challenges to the validity of the Trust or Trust Beneficiary IBA, or the construction of language used in this Declaration of Trust, Joinder Agreement or Termination Agreement, or the use of the Trust for a specific Trust Beneficiary, by any federal or state governmental or semi-governmental agency, or private third party or entity. This Section is subject to approval by AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS, unless not required by future laws or regulations.

#### **SECTION 8.8 RESIGNATION OR REMOVAL OF TRUSTEE**

A Trustee may resign or may be removed by the Non-Profit upon thirty (30) days written notice, and, if applicable, subject to confirmation by any court retaining jurisdiction over a Trust Beneficiary's IBA affected by the resignation

or removal. If a Trustee resigns or is removed, the Non-Profit shall select a Successor Trustee and give written notice thereof to the Trust Beneficiaries, directly, or to their Beneficiary Advocate, as the Non-Profit may decide, in its sole and absolute discretion. The Successor Trustee shall be selected by the Non-Profit as soon as practicable after notice of resignation is received by the Non-Profit or notice of removal of the Trustee is provided by the Non-Profit. Any Trustee that resigns or is removed shall serve until another person of entity accepts being appointment Successor Trustee. Any Successor Trustee shall act without any liability for the acts or omissions of any predecessor Trustee.

## **SECTION 8.9 ACKNOWLEDGMENT OF PARTIES**

As evidenced by the execution of the Joinder Agreement, the Grantor, Trust Beneficiary, and his or her Beneficiary Advocate, if any, understand and acknowledge that none of the Qualified Persons shall be liable to any Grantor, Trust Beneficiary, or Beneficiary Advocate, and their heirs, successors and assigns or any other party for their acts performed in good faith.

## **SECTION 8.10 HIPAA RELEASE PROVISION**

By signing the Joinder Agreement, a Trust Beneficiary, directly or indirectly through his or her Grantor, or Beneficiary Advocate, authorizes the release of all individually identifiable protected health information and medical records pertaining to the Trust Beneficiary to the Non-Profit, the Trustee, Investment Advisor and Administrator, and their designated directors, officers, members, employees and agents. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 C.F.R. 160-164 and to all entities and individuals covered by HIPAA. This authority has no expiration date and will only expire if revoked in writing by one of the persons granting it, with written notice to the Qualified Persons, and delivered to an applicable health care provider.

## **SECTION 8.11 DISBURSEMENT DISPUTES**

If at any time a dispute arises between the Trust Beneficiary or his or her Beneficiary Advocate and a third party vendor about a disbursement request for a product or a service provided by the third party vendor to or for the benefit of a Trust Beneficiary, either the Non-Profit or Trustee may act as an arbitrator to determine whether or not such disbursement should be denied or approved in light of the appropriateness of avoiding litigation expenses, fines or penalties. The decision by the Non-Profit or Trustee as arbitrator shall be final as to the approval or denial of the disbursement request.

If at any time a dispute arises between the Trust Beneficiary or his or her Beneficiary Advocate and a taxing agency about whether or not a disbursement request should be approved and disbursed to the taxing authority for the benefit of a Trust Beneficiary, either the Non-Profit or Trustee may act as an arbitrator to determine whether or not such disbursement should be denied or approved in light of the appropriateness of avoiding litigation expenses, fines or penalties. The decision by the Non-Profit or Trustee as arbitrator shall be final as to the approval or denial of the disbursement request.

Subject to A.R.S. § 36-2934.01, the Trustee may make a disbursement to a third party vendor or taxing authority even if the Trust Beneficiary or his or her Beneficiary Advocate did not request such disbursement. Neither the Non-Profit nor the Trustee shall be liable for approving or denying a disbursement request or making such disbursement. The Non-Profit and Trustee shall be held harmless from any claims of third parties and taxing authorities for debts of a Trust Beneficiary. The Trustee may pay the Non-Profit and Trustee additional compensation for these services and reimburse their expenses from a Trust Beneficiary's IBA.

## **SECTION 8.12 FRAUDULENT TRANSFERS**

The Non-Profit, Trustee, Investment Advisor and Administrator shall not be liable for any fraudulent transfer or conveyance made by the Trust Beneficiary, or his or her Beneficiary Advocate, to obtain or continue to receive Government Assistance benefits or other public or private benefits.

## **SECTION 8.13 SEEKING ADVICE AND ASSISTANCE**

The Non-Profit or Trustee may, but neither is required to, retain (1) an attorney at law as an IBA Counsel, (2) Beneficiary Advocates, or (3) other people or entities, including any federal, state and local agencies that are established to assist people with disabilities, (collectively "Professional Assistance Providers") to identify programs or resources that may provide legal, social, financial, developmental or other assistance to a Trust Beneficiary. The Trustee is authorized to pay the Professional Assistance Providers their reasonable fees and expenses from the affected Trust Beneficiary IBA., subject to approval by AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS, unless not required by future laws or regulations. The Qualified Persons shall not be liable to any Trust Beneficiary, or his or her Beneficiary Advocate, for failing to identify any programs or resources that may be available to such Trust Beneficiary because of his or her disability. It shall be the sole responsibility of the Trust Beneficiary, or his or her Beneficiary Advocate, to seek and apply for appropriate Government Assistance benefits or other public or private benefits.

# **ARTICLE NINE TRUST INVESTMENT POWERS**

## **SECTION 9.1 TRUSTEE AND INVESTMENT ADVISOR AUTHORITY**

The Trustee and Investment Advisor, as appropriate, shall have full discretionary power and authority, subject to any court retaining jurisdiction over an IBA, to do all acts and things necessary to accomplish the intent and purpose of the Trust. The Trustee and Investment Advisor shall perform their respective duties as provided in this Declaration of Trust and any other agreements incorporated herein, to receive, hold, administer, manage, invest, and control all the income and principal and to do such other acts or things concerning the Trust and Trust Beneficiary's IBA. The power and authority of the Trustee and Investment Advisor shall include, but is not limited to, all of the powers and authority conferred upon them under applicable federal and state laws and regulations. All such laws and regulations are hereby incorporated by reference into this Declaration of Trust.

## **SECTION 9.2 TRUSTEE DELEGATION**

For the Trustee to meet its responsibilities under applicable state uniform prudent investor laws and uniform principal and income laws, or any other applicable state laws, and amendments thereto, the Trustee may delegate some or all of its investment functions to an Investment Advisor.

## **SECTION 9.3 INVESTMENT POWERS**

The Trustee shall comply with applicable federal and state laws and regulations regarding investment and management of assets in IBAs, including those IBAs subject to continuing jurisdiction of an appropriate state court unless otherwise ordered by a court retaining jurisdiction over a Trust Beneficiary's IBA. The Trustee shall monitor any Investment Advisor selected by the Non-Profit to make sure that the Investment Advisor complies with applicable federal and state laws regarding investment and management of assets in IBAs. The Trustee shall have the power to (1) invest and manage assets in a Trust Beneficiary's IBA; and (2) monitor the Investment Advisor's investment and management of assets in a Trust Beneficiary's IBA, in any of the following:

- 1) Government obligations, bonds, treasury bills, notes, investment grade corporate bonds, or other similar investments of the United States, any State or corporations;
- 2) United States Treasury bonds redeemable at par value on the death of the holder for payment of federal estate taxes, regardless of maturity date;
- 3) Securities listed on an established stock or bond exchange in the United States which are purchased on such exchange;
- 4) An interest in a money market mutual fund registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80 a-1, et seq.) or an investment vehicle authorized for the collective investment of trust funds pursuant to Section 9.18 of Part 9 of Title 12 of the Code of Federal Regulations, the portfolios of which are limited to United States government obligations maturing not later than five years from the date of investment and to repurchase agreements fully collateralized by United States government obligations;
- 5) Mutual funds held and traded in the United States; and
- 6) Any other investment that the Trustee, in its sole and absolute discretion, determines is prudent and consistent with the intent and purpose of this Trust and the Trust's Investment Architecture.

## **ARTICLE TEN AMENDMENTS TO TRUST**

### **SECTION 10.1 TRUST AND IBAS ARE IRREVOCABLE**

The Trust and the Trust Beneficiary's IBA shall become irrevocable after the Non-Profit accepts the Trust Beneficiary's Joinder Agreement, the Trustee accepts the assets contributed by the Grantor, and the disabled individual seeking to become a Trust Beneficiary completed enrollment.

### **SECTION 10.2 TRUST AMENDMENTS**

Notwithstanding the irrevocability of this Declaration of Trust and the Trust created herein, as set forth in Article One Section 1.3 , this Declaration of Trust and Trust created herein may be amended from time to time to effectuate their intent and purpose. The Non-Profit, in its sole and absolute discretion, may, but is not required to, amend this Declaration of Trust and the Trust created herein so that each shall:

- 1) Conform with any statutes, rules, or regulations relating to the intent and purpose of the Declaration of Trust and Trust, and meet the requirements of any new laws, rules or regulations affecting the intent and purpose for using and operating the Trust and administering the assets in the Trust Beneficiary IBAs;
- 2) To continue to achieve the intent and purpose of the Trust;
- 3) To clarify the construction of the Declaration of Trust and administration of the Trust;
- 4) To comply with the specific requirements of state and federal law which may be applicable to a Trust Beneficiary or his or her IBA; and
- 5) To comply with Internal Revenue Service, other federal or state government agency requests, requirements, laws or regulations as may be necessary from time to time.

### **SECTION 10.3 METHOD OF MAKING AMENDMENTS**

The Non-Profit may amend the Trust by making an amendment or attaching an addendum to the Declaration of Trust. The Declaration of Trust may be amended by the Non-Profit after giving thirty (30) days written notice to the Trust Beneficiaries, or their Beneficiary Advocates. Alternatively, the Non-Profit may attach an addendum to the Trust and subsequently give written notice of the addendum to the Trust Beneficiaries, or their Beneficiary Advocate. If an amendment or addendum only affects a limited number of Trust Beneficiaries, notice only has to be given to the affected Trust Beneficiaries or their Beneficiary Advocates.

### **SECTION 10.4 LIMITED SCOPE OF AMENDMENTS**

All contributions of assets to the Trust and to a Trust Beneficiary's IBA are irrevocable and subject to the terms of this Trust. The Non-Profit shall not amend the Trust in any way that will convert irrevocable asset contributions into revocable asset contributions. No amendment shall be made that will disqualify a Trust Beneficiary from being eligible for, or continuing to receive, his or her Government Assistance benefits.

### **SECTION 10.5 COURT APPROVAL**

The Non-Profit may submit any amendment for approval to a court of competent jurisdiction, but is not required to do so for IBAs not subject to court jurisdiction. Any amendment affecting a Trust Beneficiary IBA that is under continuing court jurisdiction may be submitted for approval by such court unless the Non-Profit determines it is not necessary to do so or the court specifically orders otherwise.

## **ARTICLE ELEVEN GENERAL PROVISIONS AND DEFINITIONS**

### **SECTION 11.1 APPLICABLE GOVERNING LAW**

This Trust shall be construed under and regulated by the laws of the State of Arizona and where appropriate, federal laws.

### **SECTION 11.2 PRINCIPAL PLACE OF TRUST ADMINISTRATION**

This Trust shall have as its principal place of administration the State of Florida.

### **SECTION 11.3 DONATIONS**

Donations, gifts, and devises to the Non-Profit shall be for the benefit of the Non-Profit and shall be irrevocable. Any undistributed income of the Trust that is attributable to the Trust Remainder Share shall be accumulated and added to the principal of the Trust Operating Account.

### **SECTION 11.4 RELATED ACTIVITIES**

Subject to approval by AHCCCS or a court of competent jurisdiction with advance notice to AHCCCS unless not required by future laws or regulations, the Qualified Persons may engage in activities related to the Trust and receive compensation as long as there is no actual conflict of interest between these activities and their responsibilities to the Trust after full disclosure to the Trust Beneficiary, or his or her Beneficiary Advocate, of any apparent conflict of interest that may exist.

## **SECTION 11.5 NOTICES**

All notices and consents shall be in writing and sent by U.S. mail, overnight courier, or by personal delivery, with a receipt acknowledged in writing, to the respective individual or entity at the addresses listed in the Joinder Agreement unless corrected or changed address information is provided in the same manner to: (1) The Qualified Persons and Trust by the Grantor, Trust Beneficiary, or his or her Beneficiary Advocate, or (2) the Grantor, Trust Beneficiary, or his or her Beneficiary Advocate, by the Non-Profit or Trustee, as appropriate.

## **SECTION 11.6 INDEMNIFICATION**

The Grantor, Trust Beneficiary and his or her Beneficiary Advocate shall assume liability for and indemnify and hold harmless the Non-Profit, the Trustee, the Investment Advisor, and the Administrator, and their shareholders, directors, officers, employees, agents, subcontractors, successors, business partners, and assigns, individually or collectively, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, and expenses, including reasonable legal expenses, of whatsoever kind or nature imposed on incurred by, or asserted against the Non-Profit, the Trustee, the Investment Advisor, and the Administrator, and their shareholders, directors, officers, employees, agents, subcontractors, successors, business partners, and assigns, individually or collectively, arising from any of their acts or omissions in performing under this Agreement. However, the Trustee, the Investment Advisor, and the Administrator, including their shareholders, directors, officers, employees, agents, subcontractors, successors, business partners, and assigns, individually or collectively, shall not be indemnified with respect to matters as to which he, she or it shall be finally determined to have been guilty of willful misconduct in their performance by a court of competent jurisdiction. This right of indemnification shall not be exclusive of other rights to which the Non-Profit, the Trustee, the Investment Advisor, and the Administrator and their shareholders, directors, officers, employees, agents, subcontractors, successors, business partners, and assigns, individually or collectively, may be entitled as a matter of law, equity, or otherwise.

## **SECTION 11.7 EFFECTIVE DATE OF TRUST**

The Trust is established by the Non-Profit on the date first written above and said date shall be the effective date of the Trust.

## **SECTION 11.8 GENDER, SINGULAR AND PLURAL FORMS**

Words denoting the masculine or feminine gender shall be construed to mean or include the opposite gender and the singular form shall be construed to include the plural and the plural the singular, as the context requires or admits.

## **SECTION 11.9 CAPTIONS AND HEADINGS**

The captions and headings of Articles, Sections, subsections, paragraphs and subparagraphs used in this Declaration of Trust are for reference purposes only and shall have no effect on the interpretation of this Declaration of Trust or the Trust created herein. The captions and headings have only been included for convenience purposes to make it easier to locate the subject covered by each provision and are not to be used in construing this Declaration of Trust or Trust or in ascertaining the purposes or intentions of the Non-Profit, Trustee, Administrator, Investment Advisor, Declaration of Trust or the Trust.

## **SECTION 11.10 SEVERABILITY**

The invalidity or unenforceability of any provision of this Declaration of Trust shall not affect the validity or enforceability of any other provisions of this Declaration of Trust. If any provision of this Declaration of Trust or

Trust created therefrom is determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Declaration of Trust shall be interpreted and construed as if any invalid or unenforceable provision had never been included in this Declaration of Trust, and such invalid and unenforceable provision shall not invalidate or make unenforceable the Trust or the other provisions of this Declaration of Trust.

### SECTION 11.11 LEGAL CITATIONS

If a legal citation is incorrectly stated, the correct citation shall be deemed to have been stated. If a citation to Arizona law is described, but the law of another state or federal law is applicable, the then applicable citation for such state or federal law shall be deemed to have been described. Citations include amendments that may be made from time to time.

### SECTION 11.12 OTHER REFERENCES

If a reference to a section in another document is incorrectly stated, the correct reference shall be deemed to have been described.

### SECTION 11.13 DEFINITIONS

For purposes of this Declaration of Trust, the following definitions shall apply:

- A. **Allowable Disbursements** mean payments from a Trust Beneficiary's Individual Benefit Account permitted by the Trust, Declaration of Trust, Trust Beneficiary's Joinder Agreement or Termination Agreement., and A.R.S. § 36-2934.01.
- B. **Assets** mean and include both the principal and income of the Trust or a Trust Beneficiary's IBA, as applicable.
- C. **Beneficiary Advocate** means the person and successor people, as applicable, named in the Joinder Agreement, or otherwise selected by the Non-Profit, who are authorized, in the same capacity as an attorney in fact agent of the Trust Beneficiary, to communicate with the Trustee or Non-Profit about the Trust Beneficiary's investment interests, health care, social activities, care management, residential options and other issues relating to the life care of the Trust Beneficiary or otherwise act on behalf of or receive notice for the Trust Beneficiary as provided in the Declaration of Trust, Joinder Agreement, Termination Agreement and other documents and agreements executed when the Trust Beneficiary completed enrollment.
- D. **Beneficiary Counsel** means the attorney at law retained by a Trust Beneficiary to represent the Trust Beneficiary during his or her participation in the Trust and administration of his or her IBA.
- E. **Complete Enrollment, Completed Enrollment or Completes Enrollment** means that the Joinder Agreement is approved by the Non-Profit and the Trustee; the assets to be contributed to the Trust are received by the Trustee; the Trustee accepts the contributed assets, and the Trustee establishes or creates a Trust Beneficiary's IBA for the disabled individual with the contributed assets.
- F. **Contributed Amount or contributed assets** means the initial amount and any subsequent amounts of property or money contributed or transferred to the Trust on behalf of a disabled individual seeking to become or who already is a Trust Beneficiary and which property or money is deposited into a Trust Beneficiary's IBA.

- G. **Disabled Person** means a person having a physical or mental impairment that complies with the requirements of 42 U.S.C. § 1382c(a)(3) or complies with the definition of a Trust Beneficiary as set forth in Item Y below.
- H. **Government Assistance** means any and all services, medical care, benefits and financial assistance that may be provided by any county, state or federal agency, now or in the future, to or on behalf of a Trust Beneficiary that arises from eligibility or receipt of Supplemental Security Income (SSI) benefits, Medicaid or other similar governmental benefits for persons with mental health or other disabilities.
- I. **Grantor** means a parent, grandparent, spouse or legal guardian of a Trust Beneficiary, a Trust Beneficiary himself or herself, or any person or entity acting pursuant to a valid power of attorney or an order by a court, who seeks to complete enrollment for an individual and also includes, when applicable, any person or entity that contributed his, her or its own assets to the Trust for the sole benefit of a Trust Beneficiary, whether by gift, will, contract, or agreement.
- J. **Individual Benefit Account (IBA)** means the financial account within the Trust maintained for the sole benefit of an individual Trust Beneficiary and shall be equal to the initial value of the assets contributed on the Trust Beneficiary's behalf less disbursements made on behalf of the Trust Beneficiary, increased by earnings and appreciation, less taxes, expenses, depreciation, administrative costs, administrative expenses, and fees.
- K. **IBA Counsel** means an attorney at law retained by the Non-Profit or Trustee to provide legal services to the Non-Profit or Trustee as required for the proper administration of the Trust or Trust Beneficiary's IBA.
- L. **Investment Policy** is the policy described by the Trustee for investing the assets in the IBA in consultation with and upon the advice of the Investment Advisor.
- M. **Joinder Agreement** is a separate written agreement used by an individual to enroll and participate in the Trust as a Trust Beneficiary. The written agreement is between the Non-Profit, Trustee, if appropriate, and the Grantor and permits the Grantor to establish an IBA for the sole benefit of a Trust Beneficiary.
- N. **Legal Representative** means a legal guardian, natural guardian, conservator, agent acting under a valid power of attorney, trustee, representative payee, custodian under the Uniform Gift or Transfers to Minors Act of any state, or other person caring for a Trust Beneficiary who can act on behalf of a Trust Beneficiary for the purpose of making binding agreements with the Trust.
- O. **Master Pooled Self Settled Special Needs Trust** refers to the Trust described in this Declaration of Trust and created herein.
- P. **Medicaid** refers to a state's Medicaid programs and equivalents.
- Q. **Qualified Persons** refers to the Non-Profit, Trustee, Investment Advisor, and Administrator, and their successors, assigns, agents, subcontractors, directors, officers, employees and members.
- R. **Reimbursement Claims** refers to the applicable claims or liens of any governmental agency which is entitled to reimbursement for benefits paid to or for the benefit of a Trust Beneficiary because of being a participant of the Trust.
- S. **Remainder Amount** means all of the remaining funds, if any, in an IBA of a deceased Trust Beneficiary or an IBA that has been terminated.

- T. Required Documents** refers to any documents required to enroll and participate in the Trust, including the Joinder Agreement, Termination Agreement, and any other documents required by the Non-Profit or the Trustee.
- U. Successor Trustee** means a Trustee that has been appointed to succeed the functions and obligations of the original, initial, or previous Trustee. The term applies to each Successor Trustee, but such Successor Trustee is referred to as a Trustee in this Declaration of Trust, Trust created herein, Joinder Agreement, and Termination Agreement.
- V. Supplemental Services** are services that provide for the "special needs," "supplemental needs" and "supplemental care," of a Trust Beneficiary, and include non-support disbursements, and non-support needs and non-support care that are not provided by Government Assistance benefits to the extent permitted under A.R.S. § 36-2934.01.
- W. Termination Agreement** is the Trust Beneficiary's agreement that provides how assets remaining in a Trust Beneficiary's IBA shall be distributed at the death of a Trust Beneficiary or when the Trust Beneficiary's IBA is terminated during the lifetime of the Trust Beneficiary.
- X. Trust Application** means the application completed and signed by a Grantor when applying to enroll an individual as a Trust Beneficiary of the Trust.
- Y. Trust Beneficiary** means a disabled person, as defined in § 1614(a)(3) of the Social Security Act (42 U.S.C. § 1382c(a)(3)) and under AHCCCS Eligibility Policy Manual MS 804.01.B, who qualifies under 42 U.S.C. § 1396p, and who is identified by a Grantor as the sole recipient of services and benefits from the assets in IBA created within this Trust for such disabled person.
- Z. Trust Operating Account** means the account into which the Trust Remainder Share is paid to when a Trust Beneficiary's IBA is terminated. The Trust Operating Account is owned by the Non-Profit and the Non-Profit uses the funds transferred to the Trust Operating Account are used to carry out the Non-Profit's not for profit, tax exempt, and charitable purposes.
- AA. Trust Remainder Share** means the amount of a Trust Beneficiary's IBA Remainder Amount retained by the Trust in the Trust Operating Account.
- BB. Trustee** means the Non-Profit or independent corporate trustee acting as agent and trustee for the benefit of the Non-Profit to custody and/or administer trust assets pursuant to instructions that are for the sole benefit of the Beneficiaries participating in the Arizona Charities Pooled Trust and that are in accordance with the terms of the Declaration of Trust and not contrary to state or federal law. All references to "Trustee" includes Trustees, Co-Trustee, Co-Trustees, Successor Trustees or Co-Successor Trustees as may be applicable and appointed by the Non-Profit.

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# Execution

IN WITNESS WHEREOF, the undersigned hereby subscribes and executes this Declaration of Trust on the date and year first written above.

Charities Pooled Trust, (Settlor and Trustee)

By: [Signature]

Title: Executive Director

STATE OF FLORIDA )  
COUNTY OF Pinellas ) ss.

On 16<sup>th</sup> day of August, 2010, before me, Jo Ann M. Reinhardt a Notary Public, personally appeared DANIEL C. PARRI,  personally known to me, [ ] has produced \_\_\_\_\_ as identification, or [ ] was identified by a credible witness affidavit to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

[Signature]  
Notary Public, State of Florida

My Commission expires on: \_\_\_\_\_

My commission number is: \_\_\_\_\_

