

# ***The First Maryland Disability Trust***

## **RESTATED DECLARATION OF Of First Maryland Disability Trust, Inc.**

THIS RESTATED DECLARATION OF TRUST ("Restated Declaration of Trust") is made this 21<sup>st</sup> day of December, 2015, by First Maryland Disability Trust, Inc., a charitable non-profit Maryland corporation, as SETTLOR (sometimes referred to herein as "Settlor") of The First Maryland Disability Trust (sometimes referred to herein as "The Trust"), for the benefit of certain individuals with disabilities (sometimes referred to herein as "Beneficiary" or "Beneficiaries"), for which an individual's Sub-Account, as described herein below, shall be established.

### **PREAMBLE**

WHEREAS, the Settlor established The First Maryland Disability Trust in accordance with the terms of a Declaration of Trust dated September 2, 2008 by and between Settlor and Trustee;

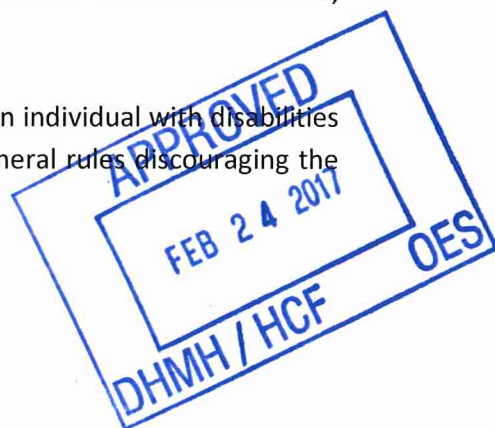
WHEREAS, in accordance with the power reserved to Settlor by Article Ten of said Declaration of Trust this Restated Declaration of Trust is made by the Settlor in order to completely restate the trust entered into by the Settlor;

WHEREAS, Congress anticipated the creation, establishment and management by non-profit corporations of pooled funds for the benefit of persons with disabilities in the enactment of Section 1917 of the Social Security Act of 1935 (the Act), as amended by the Omnibus Budget Reconciliation Act of 1993;

WHEREAS, Congress provided that the assets of an individual with disabilities in an account of such a pooled trust are exempt from the general rules governing availability of assets in the determination of financial eligibility for the benefits under Medical Assistance, Title XIX of the Social Security Act, commonly know as Medicaid;

WHEREAS, Congress provided that the transfer of assets of an individual with disabilities to his or her account in such a pooled trust is exempt from the general rules discouraging the transfer of assets for the purpose of qualifying for Medicaid;

*The First Maryland Disability Trust*



WHEREAS, Congress subsequently provided that the assets of an individual with disabilities in an account of such a pooled trust are also exempt from the general rules governing availability of assets in the determination of financial eligibility for benefits under Supplemental Security Income, Title XVI of the Social Security Act, commonly known as SSI, and similarly provided that the transfer of assets to such an account is exempt from the general rules discouraging the transfer of assets for the purpose of qualifying for SSI;

WHEREAS, Congress further provided that the assets of in an individual's account with the pooled trust are exempt from recovery by a State under its Medicaid State Plan following the death of the individual with disabilities to the extent that the assets are retained by the trust for its charitable purposes, by exempting from the Federal provisions respecting availability and transfers of assets in a trust containing the assets of an individual who is disabled that meets the following conditions:

- i) The trust is established and managed by a nonprofit association.
- ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investing and management of funds, the trust pools these accounts.
- iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by the court.
- iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter.

42 U.S.C. § 1396p(d)(4)(C);

WHEREAS, First Maryland Disability Trust, Inc., a non-profit corporation organized under the laws of the State of Maryland, operates as a charitable organization under Section 501 (c)(3) of the Internal Revenue Code, as certified by Internal Revenue Service by a letter dated June 1, 2006;

WHEREAS, the Board of Directors of the First Maryland Disability Trust, Inc. understands that the Restated Declaration of Trust, in due course, will be approved by the Office of the Attorney General of the State of Maryland as meeting the requirements of COMAR § 10.09.24.08-2B(6)(b), which are substantially identical to 42 U.S.C. § 1396p(d)(4)(C); and

WHEREAS, the Trustee agrees to hold, administer, and distribute the income and principal of the Trust and Trust Sub-Accounts for the exclusive benefit of Beneficiaries and other individuals with disabilities in accordance with the terms and provisions of this Restated Declaration of Trust;

NOW THEREFORE, First Maryland Disability Trust, Inc. hereby promulgates this Restated Declaration of The First Maryland Disability Trust pursuant to which the Trustee shall receive, administer, and disburse assets of the Trust and Trust Sub-Accounts as provided under this Restated Declaration of Trust henceforth forward.

## **-ARTICLE 1- DEFINITIONS**

**1.1     “Assets”** means all property contributed to and held in a Sub-Account at any time and from time to time.

**1.2     “Beneficiary” or “Beneficiaries”** means the person with disabilities who is the beneficiary of a respective Trust Sub-Account.

**1.3     “Code”** means the United States Internal Revenue Code of 1986, as amended, as well as any regulations, administrative rulings, and judicial determinations made under the provisions of the Code. Unless otherwise specified to the contrary, reference to a particular section of the Code includes any successor thereto and any amendment thereof.

**1.4     “Fund” or “Trust Fund”** means all contributions made to the Trustee under this Restated Declaration of Trust by or on behalf of Beneficiaries, together with the income from investments made therewith, less all distributions, expenses and withdrawals.

**1.5     “Government Assistance”** means all services, benefits, medical care, financial assistance, and any other assistance of any kind that may be provided by any county, state, or Federal agency to, or on behalf of, a Beneficiary. Such assistance includes, but is not limited to, Title XVI (the Supplemental Security Income [SSI]), the Old Age, Survivor and Disability

Insurance Program (OASDI), the Social Security Disability Insurance Program (SSDI) the Medicaid Program including the Maryland Medical Assistance Long Term Care Program, Home and Community Based Waiver Services (HCBS), or any other public assistance programs of the State of Maryland or any other states of the United States, together with any additional, similar, or successor programs created pursuant to Federal law or the law of Maryland.

**1.6 “Grantor”** means an (a) individual with disabilities, (b) the parent, grandparent, or legal guardian of the individual with disabilities, or (c) an individual appointed by a Court to act on behalf of the person with disabilities, who establishes a Sub-Account for the benefit of that person. Any contributions from a person or entity other than the Beneficiary shall be treated for all purposes herein as if contributed by the Beneficiary.

**1.7 “Joinder Agreement”** means a written agreement between the Trustee and a Grantor by which the Grantor establishes a Sub-Account for the benefit of a Beneficiary under this Trust.

**1.8 “Legal Guardian”** means a person with authority granted by a court to manage and dispose of the property of the individual, and includes a conservator appointed pursuant to D.C. Code § 20-2001 *et seq.*, or a guardian of person or property under Maryland Estates and Trusts Code § 13-201 *et seq.*, or § 13-704 *et seq.*, or under the comparable law of any other State.

**1.9 “Legal Representative”** of an individual means a legal guardian, natural guardian, conservator, agent acting under a durable power of attorney, or any other person acting in a fiduciary capacity with authority to disburse the property of the individual.

**1.10 “Person with disabilities”** means a person who is disabled as that term is defined in §1614(a)(3) of the Social Security Act, §1382c(a)(3).

**1.11 “Property”** means any asset contributed or to be contributed to the Trust.

**1.12 “State”** means state as that term is used in Titles XVI and XIX of the Social Security Act, 42 U.S.C. § 1381 *et seq.*, and § 1396 *et seq.*

**1.13 “Settlor”** means First Maryland Disability Trust, Inc.

**1.14 “Supplemental Care” or “Supplemental Need”** means care that is not adequately provided, or needs that are not adequately met, by any private assistance or Government Assistance that may be available to the Beneficiary.

**1.15** *“Trust”* means the pooled trust created by First Maryland Disability Trust, Inc. under this Restated Declaration of Trust.

**1.16** *“Trust Agreement”* means this Restated Declaration of Trust as amended from time to time.

**1.17** *“Trust Sub-Account”* (or Sub-Account) means that portion of the Trust estate for which an account has been established under the Trust for the benefit of the person with disabilities.

**1.18** *“Trustee”* means the person serving from time to time as Trustee or as a Successor Trustee of the Trust. The term “Trustee” being used herein in the singular means all Trustees collectively as well as individually.

## **ARTICLE II**

### **ESTABLISHMENT OF TRUST**

**2.1** *Establishment of Trust.* Settlor and Trustee now restate the Trust for the benefit of persons with disabilities who are Beneficiaries (as Defined in Article I) of the Trust. The Trust is established in compliance with 42 U.S.C. §1396p and other applicable Federal statutes and the laws of the State of Maryland.

**2.2** *Name of Trust.* The name of the Trust established under this Restated Declaration of Trust is *The First Maryland Disability Trust*. The document creating the Trust may be referred to as the Restated Declaration of Trust.

**2.3** *Irrevocability.* The Trust established by this Restated Declaration of Trust and any Individual Accounts established under it are *irrevocable*. No Grantor or Beneficiary has any right or authority to revoke or amend the Trust Agreement or any part thereof.

**2.4** *Amendments to Trust.* Notwithstanding the irrevocability of this Trust as set forth in Paragraph 2.3 above, this Trust may be amended by the Trustee from time to time to comply with its purposes and intent as set forth in this document. The Trustee may also amend the Trust to conform to any change in any statute, rules, regulations or policies affecting persons with disabilities, Government Assistance for such persons, or trusts held for their benefit.

**2.5 Duration.** The Trust created under this Restated Declaration of Trust is perpetual, provided, however, that this Trust may be terminated pursuant to ARTICLE VIII, TERMINATION OF TRUST OR TRUST SUB-ACCOUNTS, below.

**2.6 Fiscal Year.** The Trust and each Trust Sub-Account shall operate on a calendar year, beginning January 1 of each year and ending December 31 of the same year.

### **-ARTICLE III- TRUST FOR SUPPLEMENTAL CARE AND NEEDS**

**3.1 First Maryland Disability Trust, Inc. Establishes This Supplemental Needs Trust.** First Maryland Disability Trust, Inc. establishes this First Maryland Disability Trust as a supplemental needs trust for management and investment purposes pursuant to Section 1917(d)(4)(C) of the Social Security Act, as amended, 42 U.S.C. § 1396p(d)(4)(C), for the benefit of individuals with disabilities. Notwithstanding any other provision of this Restated Declaration of Trust, the following provisions apply:

**3.1.1 No power to compel.** No person shall enjoy any right, title, interest or privilege to compel the Trustee to make a distribution of assets or income from the Trust estate or from a Trust Sub-Account to the Beneficiary thereof or for his or her benefit.

**3.1.2 Not available.** No asset or income held by the Trust or in any Trust Sub-Account shall be available to a Beneficiary except upon distribution by the Trustee.

**3.1.3 No obligation of support.** The Trustee in its fiduciary capacity has no obligation of support for any Beneficiary of the Trust and is to use the assets and income of the Trust or of any Trust Sub-Account for the supplemental needs and care of a Beneficiary.

**3.2 Principal Purpose and Objective** The principal purpose of First Maryland Disability Trust, Inc. as Settlor and the principal objective of this Trust is to provide a system for the management, investment and disbursement of Trust assets to promote the comfort and quality of life of Beneficiaries by providing them with necessary goods and services to improve the quality of their lives by meeting needs not otherwise provided by a government assistance program or by any other private program.

**3.2.1 Intent to establish accounts for supplemental benefits and not for support and maintenance of beneficiaries.** Settlor does not intend that the Trust assets or assets or income of a Trust Sub-Account shall be required to be used for a Beneficiary's basic maintenance, support, medical, dental or therapeutic care, nor for any other goods or services that may be paid for or provided by any other source.

**3.2.2 Distributions to meet Beneficiary's needs.** Notwithstanding any other provisions of this Restated Declaration of Trust to the contrary, the Trustee may, in its sole and absolute discretion, make distributions to meet a Beneficiary's need for food, clothing, shelter, health care or other personal needs, even if such distributions may result in a reduction or loss of the Beneficiary's benefits or assistance from a public or private agency, but only if the Trustee determines, in its sole and absolute discretion, (1) that the Beneficiary's needs will be better met if such distribution is made, and (2) that it is in the Beneficiary's best interest to suffer the reduction or loss of benefits or assistance from any public or private agency. Prior to making such distributions, the Trustee shall confer with the Beneficiary, Grantor and/or their legal representatives, to review the planned distribution and the consequences of same for the Beneficiary.

**3.2.3 Secondary purpose is to assist individuals with disabilities whose own resources or accounts have been exhausted.** Settlor's secondary purpose is to provide a mechanism for providing like benefits and services to Beneficiaries whose own assets are exhausted during their lifetime. An additional purpose is to provide like benefits to other similarly situated individuals with disabilities who receive government assistance and can benefit from supplemental goods and services to improve the quality of their lives.

**3.3 Grantor's Adoption of Intent to Establish a Trust Sub-Account.** Every Grantor contributing funds to the Trust does so on the condition that the Grantor has and adopts the intent, purpose and objectives of the Trust and of this Trust as set out elsewhere.

**3.4 Distribution for Other Necessary Purposes.** Notwithstanding any other provision of this Restated Declaration of Trust to the contrary, the Trustee may use the assets of a Sub-Account to pay any tax liability accrued by a Beneficiary, including (without limitation) liability for any tax on income by reason of any income attributable to the Sub-Account maintained on behalf

of the Beneficiary and liability for estate or inheritance taxes by reason of the principal of a Sub-Account at the time of the death of the Beneficiary.

#### **-ARTICLE IV-** **TRUST SUB-ACCOUNTS**

**4.1    *Establishing a Trust Sub-Account.*** A Grantor may establish a Sub-Account of this Trust for a Beneficiary by (a) executing a Joinder Agreement and paying the Joinder Fee set by the Trustee and (b) making a contribution of property and/or money ("Property") to the Trust, upon (c) acceptance by the Trustee of the property contributed and execution of a Joinder Agreement in writing.

**4.2    *Valuation and Acceptance of Property.*** The Trustee shall determine the value of the property contributed to a Sub-Account. In the case of an asset that is not easily marketable, the Trustee may rely upon the written opinion of an individual certified in the valuation of assets of the type in question, but may discount the value to reflect the risks to the Trust or anticipated cost in management and disposition of such asset. The Trustee's determination of value shall be binding; the sole and exclusive remedy for a Beneficiary or Grantor dissatisfied with the Trust's determination is return of the property net of any expenses incurred by the Trust with respect to the property or the Sub-Account and of expenditures to or for the benefit of the Beneficiary. The Trustee, in its absolute discretion, may decline to accept any property by reason of its unsuitability for Trust management.

**4.3    *Trustee's Discretion to Accept Beneficiaries.*** The Trustee may rely upon the determination of the Social Security Administration or any authorized governmental entity that a proposed Beneficiary is disabled as defined in Section 1614(a)(3) of the Social Security Act, 42 U.S.C. § 1382c(a)(3). If at the time a Joinder Agreement is executed the individual is not eligible for government benefits based on disability and has not obtained a governmental determination of disability, the Trustee may obtain such a determination or make its own determination of whether the individual is disabled.

**4.4    *Irrevocability of Joinder Agreement.*** Subject to approval and acceptance by the Trustee, this Trust shall be effective as to a respective Beneficiary upon the Grantor's contribution of assets ("Assets") to the Trust. Upon approval by the Trustee and delivery of the Assets that are accepted by the Trustee, the following provisions apply:



4.4.1. the Trust shall be irrevocable as to such Grantor and respective Beneficiary;

4.4.2. the designation of the respective Beneficiary may not be revoked or changed by the Grantor or Trustee;

4.4.3. Grantor acknowledges that upon delivery of the Assets to the Trust Sub-Account, Grantor shall have no further interest in and does relinquish and release all rights in, control over and all incidents of interest of any kind or nature in and to the Assets (including the original contribution to the Trust and any and all subsequent additions to the Trust) and all income thereon;

4.4.4. Grantor shall have no authority to require the Trustee to return Assets.

**4.5     *Financial Management.*** Assets of the Sub-Account shall be pooled with all other Trust assets and invested and re-invested. These assets shall be administered as a Sub-Account in the name of and for the benefit of the individual Beneficiary. Any income attributable to a Beneficiary's Sub-Account that is not distributed shall be added annually to the principal in the Sub-Account of the Beneficiary. Each Sub-Account shall be treated as a grantor trust for income tax purposes pursuant to the rules and regulations under Section 671 et seq. of the Code unless otherwise required by law.

**4.6     *Extent of Trust Distributions.*** A distribution from the Sub-Account made by the Trustee on behalf of a Beneficiary shall not exceed the sum of all contributions made to such Beneficiary's Sub-Account, plus changes in income or principal allocated to the Sub-Account from the Trust Fund, net of all distributions and duly attributable costs and expenses.

**4.7     *Future Transfer of Property.*** Property, or interest in property, may be designated for future transfer by a Grantor as a contribution to the Trust. Unless the Grantor and Trustee have agreed otherwise, the Trustee will not consider such designations to be complete or effective, nor shall the Trustee credit any such property to a particular Beneficiary's Sub-Account, until such property has actually been transferred and/or delivered to the Trustee. The gift of a future interest in property becomes irrevocable when the Trustee, pursuant to an agreement with a Grantor, credits a Beneficiary's Sub-Account for the future transfer of property.

**4.8 Reports to the Beneficiaries.** The Trustee shall provide annually to each Beneficiary or to a Beneficiary's designated advocate, as identified in the Joinder Agreement, a complete statement of the Sub-Account assets and all of the receipts, disbursements and distributions to or from such Sub-Account occurring during the reporting period. In the event of termination of a Sub-Account or of the entire Trust pursuant to ARTICLE VIII, TERMINATION OF TRUST OR TRUST SUB-ACCOUNTS, below, the Trustee shall prepare and provide to each Beneficiary a final statement of his or her Sub-Account.

**4.9 Inspection of Trust Records by Beneficiary.** Records of a Sub-Account shall be available to and open at all reasonable times for inspection by the Beneficiary or, if so provided in the Joinder Agreement, by the Grantor. The Trustee shall not be required to furnish Trust records, Sub-Account records, or documentation to any individual, corporation, or other entity who: a) is not a Beneficiary or the Grantor; b) is not the Legal Representative of a Beneficiary or Grantor; and c) does not have express written authorization of the Beneficiary or the Grantor or the Legal Representative of either to receive such information. The Trustee's decision shall be the sole and final determination as to the sufficiency of any and all written authorizations or requests for records and/or documentation. The Trustee may charge a reasonable fee for providing copies of any records whose examination is authorized.

**4.10 Reporting Taxable Income.** The Trustee shall prepare an informational income tax return for each Sub-Account showing all of the income, gains and losses attributable to, and all deductible costs and expenses that shall be charged to, each Sub-Account. The Trustee shall send the informational income tax return to the Beneficiary or the Beneficiary's designated representative unless the Joinder Agreement provides otherwise. The Grantor's execution of a Joinder Agreement constitutes an agreement to indemnify the Trustee from any and all claims for income tax liabilities attributable to the Sub-Account. Nothing contained in this Restated Declaration of Trust shall make the Trustee responsible for filing income tax returns for any Beneficiary, nor relieve a Beneficiary from the responsibility for making such filings with any jurisdiction, although the Trustee may accept such responsibility by specific agreement thereto in a Joinder Agreement.

**4.11 Costs of Defending Trust.** All costs and expenses, including attorney's fees, of defending the Trust, or any Sub-Account, against any claim, demand, legal action, equitable action, suit, accounting, or other proceeding may, in the absolute and sole discretion of the Trustee, be apportioned (a) on a *pro rata* or such other reasonable basis as the Trustee may determine, to

some or all Sub-Accounts or (b) charged only against the Sub-Account(s) of the affected Beneficiaries.

## **-ARTICLE V-**

### **DISTRIBUTIONS DURING A BENEFICIARY'S LIFETIME**

**5.1 *Distributions Within Discretion of Trustee.*** During the lifetime of a Beneficiary, the Trustee shall pay or apply for the Supplemental Care or Supplemental Needs of the Beneficiary such amounts from the principal or income, or both, of the Sub-Account held on behalf of each such Beneficiary, up to the whole thereof, as the Trustee, in its sole and absolute discretion, may from time to time deem necessary or advisable. The Trustee may consider the individual care plan as incorporated into any Joinder Agreement, as such plan may be amended from time to time, as well as future needs of a Beneficiary, when making distributions or when considering requests for distributions. Payment of a tax liability of a Beneficiary and purchase of Medicaid- and SSI-exempt pre-paid burial arrangements are permissible distributions by the Trustee.

**5.2 *Distributions Not to Replace Assistance.*** No part of the principal or income of the Trust, nor the principal or income of any Sub-Account is available to any Beneficiary except to the extent of actual distributions made by the Trustee to a Beneficiary. Distributions from this Trust need not be made to, or for the benefit of, a Beneficiary if the effect of such distribution would be to replace, reduce the level of, or disqualify a Beneficiary from receiving any Government Assistance. No distributions need be made by the Trustee to, or for the benefit of, a Beneficiary in excess of resource and income limitations of any Government Assistance program to which the Beneficiary is otherwise entitled. The Trustee may refuse any request for payment from this Trust for services that any public or private agency has the obligation to provide to Beneficiaries who otherwise qualify for such assistance.

**5.3 *Non Exclusive Examples of Appropriate Distributions:***

**5.3.1** for medical, dental, and diagnostic work and treatment for which there are no available private or public funds, or for whose quality or other features private and public benefits are not available;

**5.3.2** for medical procedures that are desirable, in the Trustee's sole discretion, even though they may not be medically necessary or life saving;

**5.3.3** for supplemental nursing care, rehabilitative and/or occupational therapy services;

**5.3.4** for differentials in cost between housing and shelter for shared and private living arrangements where such payments are permitted under a government assistance program;

**5.3.5** for care appropriate for a Beneficiary that government assistance programs may not or do not otherwise provide;

**5.3.6** for education, travel, artistic and social experiences; and

**5.3.7** for items similar in nature to those contained in the foregoing subsections 5.3.1 through 5.3.6 above, or which may promote the dignity and enjoyment of a Beneficiary, and such other items as may be specified in a Joinder Agreement.

**5.4** ***Facility of Payments.*** The Trustee, in its sole and absolute discretion, may make payment from a Sub-Account as follows:

**5.4.1** to the Beneficiary;

**5.4.2** to the Beneficiary's identified Legal Representative;

**5.4.3** to any person or entity (such as another (d)(4)(C) trust) deemed suitable by the Trustee; and/or

**5.4.4** to a provider of goods or services provided or to be provided to the Beneficiary.

**5.5** ***Purchase of Insurance to Secure Benefits.*** The Trustee may purchase insurance contracts or policies to provide insured benefits to Beneficiaries under this Trust. Each and every application for any insurance policy or contract made by the Trustee, and the policies and contracts themselves assigned, purchased, sold or exchanged shall nominate and designate the Trustee as the sole owner, with the right reserved to said Trustee to exercise any right or option

contained therein for the benefit of any Beneficiary. All such policies and contracts shall be held by the Trustee.

**5.6 *Funds May Be Exhausted.*** Trust Sub-Accounts are not established with the intent that the funds will be sufficient to meet the Beneficiary's supplemental needs during his or her lifetime. Grantors and Beneficiaries recognize and accept that a Sub-Account may be exhausted during the Beneficiary's lifetime. Grantors and Beneficiaries further recognize and accept that the Trustee has no obligation to make distributions to or for the benefit of an individual whose Sub-Account has been exhausted, and that neither the Trustee nor any other person has authority to modify this provision by means of a Joinder Agreement or otherwise.

## **-ARTICLE VI-**

### **DISTRIBUTIONS FOLLOWING BENEFICIARY'S DEATH**

**6.1 *Valuation of Account.*** Upon the death of a Beneficiary, the Trustee shall determine the final value of the Beneficiary's Sub-Account, taking into account all assets then attributable to the Sub-Account, and deducting therefrom all taxes due to any State or the Federal government by reason of the Sub-Account on the death of the Beneficiary, including estate and income taxes due to any State or the Federal government, reasonable fees for administration of the Trust and for terminating and wrapping up the Trust, including (without limitation) accountings, court filings, and the like.

**6.2 *Amounts Retained by the Trust.*** The Trustee shall retain for credit to the account of the First Maryland Disability Trust, Inc. the amount so designated by the Grantor, or other person duly authorized to make the determination of the amount to be retained by the Trust on the death of the Beneficiary and as provided in the Joinder Agreement. Any funds retained by the Trust are to be used for the charitable purposes of First Maryland Disability Trust, Inc., a §501(c)(3) tax-exempt charitable organization.

**6.3 *Election to Pay Medicaid to the Extent of its Payments on Behalf of Beneficiary.*** Funds not retained pursuant to the foregoing Section 6.2 shall be paid to a Medicaid program (or on a pro-rata basis if more than one Medicaid program) to the extent said program has made expenditures on behalf of the Beneficiary. The Trustee may take such action as it deems appropriate to obtain adequate substantiation of the amounts claimed by a state's Medicaid program. Payment shall be made after reasonable time to allow for interested persons to

challenge the Medicaid claim and seek judicial or administrative review of a final decision of the Medicaid program as to the amount due.

**6.4 *Distribution to Heirs, Legatees or Designees of Beneficiary Pursuant to Joinder Agreement.*** Funds that are not retained pursuant to Section 6.2 and which exceed the amount paid to a state Medicaid program pursuant to the Section 6.3 shall be distributed to heirs, legatees or designees of the Beneficiary as provided in the Joinder Agreement. The Trustee shall notify the individuals entitled to distribution of the balance of the Sub-Account, of the final value of the Sub-Account and of the amount of the state's claim.

**6.5 *If No Election for Payment to Medicaid Programs or No Designation of Remainder Beneficiary, Then Retention by First Maryland Disability Trust, Inc.*** If there is no instruction for payment to the State of Maryland (or other states) and/or a designation of remainderman in the Joinder Agreement, the balance of the account shall be distributed to First Maryland Disability Trust, Inc. to be used for its charitable purposes.

## **-ARTICLE VII-**

### **SPENDTHRIFT PROVISIONS**

**7.1 *Beneficiaries Have No Claim on Trust Assets.*** The funds available in a Sub-Account are not intended for the support and maintenance of the Beneficiary. Neither the Grantor, nor the Trustee owes any obligation of support to any Beneficiary; and no Beneficiary has any right or entitlement to any Trust principal or income. The Trustee has the sole, complete, absolute and unfettered discretion in the disbursement of funds from a Sub-Account. The judgment of another person or entity shall not be substituted for the judgment of the Trustee.

**7.2 *Inalienability of Benefits.*** The right of any Beneficiary to any benefit or payment under the Trust shall not be subject to anticipation, alienation or assignment. Under no circumstances may any Beneficiary compel a distribution from the Sub-Account maintained for that beneficiary or from any other part of the Trust. Any attempt by a Beneficiary to assign, transfer or dispose of his or her right to receive benefits from the Trust is null and void.

**7.3 *Trust Assets Not Subject to Creditors of the Beneficiaries.*** To the fullest extent permitted by law, no part of the Trust or any Sub-Account, whether principal or income, shall

be subject to attachment, execution, garnishment, sequestration or other legal or equitable process, or control by any public or private creditor of any Beneficiary, or by any voluntary or involuntary creditor, including (without limitation) those who have provided goods and services to a Beneficiary, except pursuant to an express, written agreement with the Trustee.

## -ARTICLE VIII-

### **TERMINATION OF TRUST OR TRUST SUB-ACCOUNTS**

**8.1     *Intent to Continue Operation of Trust.*** Every reasonable effort will be made to continue the Trust for the purpose for which it has been established. Continuing operation of the Trust, notwithstanding the lack of overall financial security, shall not, in and of itself, constitute a breach of fiduciary duty.

**8.2     *Options Upon Termination of Sub-Account because of Failure of Purpose.*** If the Trustee determines, in its sole and absolute discretion, that developments in the law, including without limitation statutory amendments and administrative agency and judicial decisions, or other developments, adversely affect the ability of this Trust to continue to serve and to operate in meeting a Beneficiary's needs supplemental to public benefits, the Trustee may, in its sole and absolute discretion, terminate the Beneficiary's Sub-Account in the following manner:

**8.2.1** The Trustee shall determine the value of assets in the Beneficiary's Sub-Account and use such assets to (i) pay taxes due from the Trust to state and federal governments by reason of the termination of the Beneficiary's Sub-Account; (ii) pay all reasonable fees due to the Trust and administrative expenses associated with the termination of the Beneficiary's Sub-Account; after such taxes, fees, and expenses have been paid, the Trustee may then distribute the Beneficiary's Sub-Account by exercising one of the following options:

(a) The Trustee may pay to the State of Maryland and any other states from which the Beneficiary has received medical assistance, all amounts remaining in the Beneficiary's Sub-Account up to the total amount of medical assistance paid on behalf of the Beneficiary from all states, each state to be paid its proportionate share. The Trustee shall take such action as it deems appropriate to obtain adequate substantiation of the amounts claimed by the state Medicaid plan or plans to have been expended on behalf of the Beneficiary. After making all payments to said Medicaid plans, the Trustee shall distribute any assets remaining in the Beneficiary's Sub-Account solely to the

Beneficiary, or the Beneficiary's Legal Representative, and to no other person, people, organizations, or entities; or

(b) The Trustee may transfer the remaining property in the Beneficiary's Sub-Account to the Trustee of another Trust properly established pursuant to 42 U.S.C. § 1396p(d)(4)(C) and to no other person, people, organization, or entities.

**8.3 Termination of the Entire Trust.** If the Trustee in its sole and absolute discretion determines that the Trust is unable to achieve its purposes with respect to all or substantially all of the Beneficiaries, the Trustee may in its sole and absolute discretion terminate the entire Trust in the following manner:

**8.3.1** The Trustee shall determine the value of assets in each Beneficiary's Sub-Account and use such assets to (i) pay taxes due from the Trust to state and federal governments by reason of the termination of the Beneficiary's Sub-Account; (ii) pay all reasonable fees due to the Trust and administrative expenses associated with the termination of the Beneficiary's Sub-Account; after such taxes, fees, and expenses have been paid, the Trustee may then distribute the Beneficiary's Sub-Account by exercising one of the following options:

(a) The Trustee may pay to the State of Maryland and any other states from which the Beneficiary has received medical assistance, all amounts remaining in the Beneficiary's Sub-Account up to the total amount of medical assistance paid on behalf of the Beneficiary from all states, each state to be paid its proportionate share. The Trustee shall take such action as it deems appropriate to obtain adequate substantiation of the amounts claimed by the state Medicaid plan or plans to have been expended on behalf of the Beneficiary. After making all payments to said Medicaid plans, the Trustee shall distribute any amount remaining in each Beneficiary's Sub-Account solely to each such Beneficiary or each such Beneficiary's Legal Representative and to no other person, people, organizations, or entities; or

(b) the Trustee may transfer the remaining property in each Beneficiary's Sub-Account to the Trustee of another Trust properly established pursuant to 42 U.S.C. § 1396p(d)(4)(C) and to no other person, people, organizations, or entities.



**-ARTICLE IX-**  
**MANAGEMENT**

**9.1    *Management.*** In its role as Trustee of this Trust, the First Maryland Disability Trust, Inc. shall manage the Trust and shall perform such acts and duties as set forth in the Declaration of Trust and the Joinder Agreement, as each may be amended or restated from time to time.

**9.2    *General Administrative Authority.*** The Trustee shall administer the Trust, paying its expenses of administration and retaining employees, including the Trustee, consultants, agents and independent contractors in securing goods and services required in the prudent management of the Trust and in the investment in the assets of the Trust. The Trustee shall exercise all powers under any and all federal and Maryland laws that may exist and be applicable to the Trust, in effect on or after the execution of Joinder Agreements by a Grantor. In addition to any expressed authority given to the Trustee either by law or pursuant to the terms of this Restated Declaration of Trust, the Trustee shall have the following full administrative powers:

**9.2.1   *Delegate ministerial and other authority.*** To delegate such of its administrative or ministerial duties and powers to such agents, attorneys or employees as may, in the opinion of the Trustee, be advisable. To delegate the signing of checks, endorsement of stock certificates, execution of transfer instruments and any other document. Any third party shall be entitled to rely conclusively on any writing signed by the President or Secretary of the Board of Directors authorizing any one or more agents to endorse any document or instrument on behalf of the Trust.

**9.2.2   *Set fees and charges for services.*** To establish fees and charges for all services provided by the Trust in management of the Trust and Sub-Accounts including (without limitation) application fees, on-going management fees based on the size of the Sub-Accounts, the activity in the account, per capita, or some combination thereof, and fees for other specific services or activities.

**9.2.3   *Set standards and initial account minimums.*** To establish standards and requirements for participation in the Trust including, without limitation, minimum initial amounts for establishing a Sub-Account.

**9.2.4 Pay Taxes.** To pay or provide for the payment of all real and personal property taxes, income taxes and other taxes and assessments of any kind levied or assessed under existing or future laws upon or in respect to the Trust, or any money or property forming a part thereof; provided however, that the Trustee may contest the validity of any tax.

**9.2.5 Execute agreements.** To make, execute and deliver any and all instruments, contracts and agreements in writing necessary or proper for the effective exercise of any of the powers as stated herein, or necessary or proper to accomplish the purpose of this Trust, or necessary or proper for the administration of this Trust or in the investment of the Trust.

## **-ARTICLE X- TRUSTEE PROVISIONS**

**10.1 Trustee Powers.** The Trustee shall have full power and authority in its sole and absolute discretion, without recourse to any court or notice whatsoever, to do all acts and things necessary to carry out the purposes of this Trust and to do such other acts or things concerning the Trust as may be advisable. The Trustee's power and authority shall include but not be limited to all those powers conferred upon fiduciaries by the Maryland Code Annotated, Estate & Trusts Article, the Maryland Rules, and all federal laws that may exist and be applicable to Trusts and as all are from time to time amended.

**10.2 Seek advice.** To seek the advice and assistance of any person, agent or entity it deems to be appropriate, including, but not limited to, any federal, state, and/or local agencies that are established to assist individuals with disabilities.

**10.3 Employ experts, professionals, and others.** The Trust may employ, at the expense of the Trust or a respective Sub-Account, such persons or entities as the Trustee may from time to time select to act as agents, accountants, appraisers, attorneys, brokers, custodians, investment counsel, social workers and/or other advisors and the Trustee may delegate discretionary powers to and to rely upon information or advice furnished by any such person or entities without independent investigation. The Trustee shall not be liable for any act or omission of

any such person or entities, nor for anything done or omitted to be done pursuant to the advice of any such person or entities.

**10.4 *Trustee Identification of Programs.*** The Trustee shall not be liable to any Beneficiary for the failure to identify any/or all programs or resources that may be available to such Beneficiary or to create programs when programs do not exist. Furthermore the Trustee is not responsible for qualifying any Beneficiary for any public assistance programs or for providing legal advice in obtaining such qualification.

**10.5. *Trustee to Receive Full Consideration for Trust Assets.*** No authority described in this Trust or available to Trustees pursuant to applicable law shall be construed to enable the Trustee to purchase, exchange, or otherwise deal with or dispose of the assets of any Sub-Account for less than adequate or full consideration in money or money's worth, other than discretionary distributions to or for the benefit of the Beneficiary.

**10.6 *Trustee Entitled to Reasonable Compensation.*** The Trustee shall be entitled to reasonable compensation and to reimbursement of costs and expenses properly incurred in the management and/or administration of the Trust. The Trustee shall be entitled to compensation to be determined from time to time by application of the schedule of fees as published by the Trustee and in effect at the time such fees are charged for Trust Sub-Accounts of a similar size and character, and in the event that Trustee shall be called upon to render any extraordinary service, it shall be entitled to additional compensation therefor.

**10.7 *Appointment of Successor Trustee.*** The Settlor reserves the right to appoint a successor Trustee.

**10.8 *Resignation of Trustee.*** Any Trustee may resign by executing and acknowledging a written resignation and delivering it, in the order of preference set forth herein, to the Settlor or to the other person then serving as Trustee. Any such resignation shall be effective when it is received by the appropriate person or persons described above, unless otherwise stated in the written resignation.

**10.9 *Indemnification of Trustee.*** The Trustee, its agents and employees, including their respective heirs, successors, assigns and personal representatives, are hereby indemnified by the Trust and the Trust property against all claims, liabilities, fines, or penalties, and against all costs and expenses, including disbursements and the cost of reasonable settlements, imposed

upon, asserted against or incurred thereby in connection with or arising out of any claim, demand, action, suit or proceeding in which he, she or it may be involved by reason of being or having been a Trustee or affiliated with a Trustee as set forth above, whether or not he, she, or it shall have continued to serve as such at the time of incurring such claims, liabilities, fines, penalties, costs, or expenses or at the time of being subjected to the same. However, the Trustee and each of its agents and employees, including their respective heirs, successors, assigns and personal representatives, shall not be indemnified with respect to actual fraud, gross negligence or willful misconduct. This right of indemnification shall be exclusive of, and not be prejudicial to, other rights to which the Trustee and each of its, agents and employees, including their respective heirs, successors, assigns, and personal representatives, may be entitled as a matter of law or otherwise.

## **-ARTICLE XI-**

### **GENERAL PROVISIONS**

**11.1 *No Requirement to Furnish Bond.*** Neither the Board of Directors nor any agents of the Board shall be required to furnish bond for the faithful performance of any duties created under this Restated Declaration of Trust. If bond is required by any law or court of competent jurisdiction, no surety shall be required on such bond.

**11.2 *Trust To Be Free From Court Supervision.*** The Trust established under this Restated Declaration of Trust shall be administered free from the active supervision of any court to the extent permitted by law. Any proceedings to seek judicial instructions or a judicial determination may be initiated by the Trustee in any court having jurisdiction over matters relating to the construction and administration of this Trust.

**11.3 *Governing Law.*** This Restated Declaration of Trust shall be governed exclusively by, and interpreted exclusively in accordance with, the laws of the United States and the State of Maryland.

**11.4 *Severability.*** Any provision of this Restated Declaration of Trust that is adjudged invalid or unenforceable under the laws of any place where the terms of the Restated Declaration of Trust are to be performed, or are sought to be enforced, shall be deemed inoperative without invalidating such provision elsewhere, and without invalidating any other provision of this Restated Declaration of Trust there or elsewhere.

**11.5 Section Headings.** Section headings may be taken into consideration to the extent they reasonably assist in elucidating or clarifying the meaning of any provisions of this Restated Declaration of Trust.

**11.6 Gender.** The masculine, feminine, and neuter, and the singular and plural, shall include each other wherever appropriate with regard to any reference to any person or entity.

**11.7 Notice.** Communications and notices required to be sent to the Trustee shall be sent to the principal business address of the Trust. Communications and notices required to be sent to a Beneficiary or Grantor shall be sent to the address(s) provided in the Joinder Agreement unless and until the Beneficiary and/or Grantor has provided the Trustee with written notice of a new address. Notices shall be by first class mail, postage prepaid, unless otherwise provided.

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

WITNESS:

Sanjay Pirtle  
SANJAY PIRTL  
Printed Name

Bhatt ..  
Vijaya Bhatt  
Printed Name

First Maryland Disability Trust, Inc. Settlor

By: RM. Loman  
President  
RON M. LANDSMAN  
Printed Name

WITNESS:

Sanjay Pirtle  
SANJAY PIRTL  
Printed Name

Bhatt ..  
Vijaya Bhatt  
Printed Name

Board of Directors of the First Maryland Disability Trust, Inc., Trustee

By: RM. Loman  
President  
RON M. LANDSMAN  
Printed Name

State of Maryland )  
County of MONTGOMERY ) ss:

Subscribed and sworn to before me, a notary public for the State of Maryland, for the purposes  
stated therein, this 21<sup>st</sup> day of December, 2015.

Witness my hand and official seal

**SANJA PIRSL**  
Notary Public State of Maryland  
My Commission Expires 9/8/2017

*Sanja Pirs*  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

