

**THE COMMUNITY FUND MANAGEMENT FOUNDATION
POOLED MEDICAID PAYBACK TRUST AGREEMENT
(TWELFTH RESTATEMENT)**

This Twelfth Restatement of Trust Agreement (“Trust Agreement”) shall be effective on October 1, 2019, and is entered into by and between The Huntington National Bank (hereinafter referred to as “Trustee,” “Successor Trustee,” or “Huntington”) and Community Fund Management Foundation (hereinafter referred to as “Trust Advisor” or “Community Fund”).

WHEREAS, the Trust Advisor entered into a Trust Agreement with Fifth Third Bank of Northeastern Ohio as original trustee on June 17, 1996, later amended in March 2000, and restated on August 25, 2000, March 28, 2002, and December 23, 2003;

WHEREAS, the Trust Advisor removed Fifth Third Bank of Northeastern Ohio as original trustee pursuant to its authority under the Trust Agreement and entered into a Trust Agreement with U.S. Bank, N.A., as successor trustee on March 27, 2006, and restated on April 24, 2007, September 23, 2008, January 2, 2009, August 31, 2010, and July 30, 2013;

WHEREAS, the Trust Advisor removed U.S. Bank, N.A., as successor trustee pursuant to its authority under the Trust Agreement and entered into a Trust Agreement with Equity Trust Company as successor trustee on November 22, 2013, and restated on March 3, 2015;

WHEREAS, the Trust Advisor removed Equity Trust Company as successor trustee effective September 30, 2019 pursuant to its authority under the Trust Agreement and has entered into this Trust Agreement with The Huntington National Bank as Successor Trustee;

THEREFORE, this Trust Agreement shall be referred to as “The Community Fund Management Foundation Pooled Medicaid Payback Trust Agreement” with The Huntington National Bank as Successor Trustee and Community Fund Management Foundation as Trust Advisor.

**ARTICLE I
Creation of the Trust**

A. This Trust Agreement is intended to be administered as a pooled trust pursuant to the following requirements as amended:

- i. 42 USC 1396p(d)(4)(C);
- ii. 42 USC 1382b(e);
- iii. RC 5163.21(F)(3)(a);
- iv. Omnibus Reconciliation Act of 1993; and
- v. Collective Investment Fund Law, 12 CFR 9.18(c)(4).

B. Any individual who is disabled as defined by 42 USC 1382c(a)(3), or that individual’s parent, grandparent, or legal guardian, or a court acting on behalf of that individual, who wishes

to have the Trustee and Trust Advisor administer property for the benefit of the individual with a disability may adopt this Trust Agreement by submitting a completed Joinder Agreement and Application for Admission to Establish a Pooled Medicaid Payback Sub-Account (“Joinder Agreement”) to the Trust Advisor.

C. The Trust Advisor, in its sole discretion, may accept or deny any Joinder Agreement and may require additional documentation in order to determine whether or not a Joinder Agreement should be accepted. Upon approval by the Trust Advisor, said Joinder Agreement shall become a part of this Trust Agreement and shall be incorporated herein by reference.

D. Each Sub-Account created hereunder shall be known separately as the “Community Fund Management Foundation Pooled Medicaid Payback Trust for the benefit of [Name of Beneficiary], [CFMF Agreement Number].”

E. Unless agreed to in writing by the Trustee and the Trust Advisor, the Trust Advisor shall retain this original Trust Agreement and all original Joinder Agreements for each Sub-Account, including all existing and future Joinder Agreements.

- i. The Trust Advisor shall not provide the originals to any third parties, but the Trust Advisor may certify that it holds the original Trust Agreement or Joinder Agreement in its custody and that a copy is as effective as the original.
- ii. The Trust Advisor shall retain the originals and copies of prior Trust Agreements and amendments, as well as originals and copies of Joinder Agreements for closed Sub-Accounts, pursuant to its record retention policy.

Article II

Transfer of Property to Trust

A. The Trustee shall hold in a pooled account all property that becomes an asset of the Trust established pursuant to this Trust Agreement and each separate Joinder Agreement.

B. The Trustee shall maintain records that identify a separate Sub-Account for each beneficiary but, for purposes of investment and management of funds, the Trustee shall pool the Sub-Accounts. The Trustee shall maintain a record for each Sub-Account that includes, among other items, the amount contributed for each beneficiary.

C. The Trustee may refuse to accept, in whole or in part, interest in any property for any reason that is attempted to be transferred to the Trust by a grantor or any other party.

Article III

Distribution of Principal and Income for the Benefit of the Beneficiary

A. The Trustee shall distribute the principal and income of each Sub-Account created hereunder in cash or in kind in accordance with this Trust Agreement and the Joinder

Agreement, at the sole direction of the Trust Advisor as set forth in Article IX below, for the benefit of the beneficiary during his or her lifetime or until the termination of the Sub-Account for his or her benefit, whichever occurs sooner.

B. In making any distributions of principal and/or income, the Trustee is advised that it is the express purpose of this Trust to provide for the beneficiary's supplemental needs in addition to, and not in lieu of, the benefits such beneficiary otherwise receives from any local, state, or federal government, or from any public or private agency, any of which provide services or benefits to persons with disabilities.

C. The then-serving Designated Advocate (as such term is defined in the Joinder Agreement) shall notify the Trust Advisor of a distribution request by submitting a form created by the Trust Advisor and in a manner determined by the Trust Advisor. The Trust Advisor shall review the distribution request and has the sole authority to approve or deny the suggested distribution.

D. At the sole direction, and in the sole discretion, of the Trust Advisor, the Trustee shall supplement benefits received by a beneficiary. In making any distributions of principal and/or income, the Trustee shall distribute as much as the Trust Advisor directs. Any income not distributed shall be added to principal.

E. For purposes of determining the beneficiary's eligibility for such benefits, no part of the principal or income of the Sub-Account shall be considered available to the beneficiary.

F. If a Sub-Account is counted as a resource available to the beneficiary, the Trustee shall terminate the Sub-Account. In the event of a termination under this paragraph, the Trustee shall administer and distribute the Sub-Account as if the beneficiary had died.

G. In the event that any party petitions a court or administrative agency for the release of principal or income from a Sub-Account for a beneficiary after the Trust Advisor has denied the request, the Trust Advisor shall deny the subsequent distribution request and shall defend any contest of this paragraph or other challenge of any nature at the expense of the Sub-Account. In the event that the projected cost of such defense is reasonably believed to exceed the amount held in the Sub-Account, the Trust Advisor may elect to pay the cost for such expense or may elect to take no further defensive action.

H. The Trustee, at the direction of the Trust Advisor, may make the distributions described above to the Designated Advocate or to any person or institution responsible for or assuming the beneficiary's care, or to any person who incurred expenses on behalf of the beneficiary, however, payments from the Sub-Account shall be made as direct payments to the person or persons who supplied the goods or services to the beneficiary to the maximum extent possible.

I. Every reasonable attempt will be made to continue the Sub-Account for the purposes for which it is established, however, it is recognized that neither the Trustee nor the Trust Advisor knows how future developments in the law, including administrative agency and judicial decisions, may affect this Trust Agreement or any Sub-Account. If there is reasonable cause to believe that the principal or income of a Sub-Account has or will become liable for basic maintenance, support, or care for the beneficiary, the Trust Advisor may direct the Trustee to do either one of the following:

- i. Pay to the state(s) all amounts remaining in the Sub-Account at the time of termination up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the state Medicaid plan(s) pursuant to 42 USC 1396, *et seq.* After payment to the state(s), all remaining funds in the Sub-Account shall be distributed to the beneficiary; or
- ii. Transfer the assets remaining in the Sub-Account to another pooled Medicaid payback trust as further established under separate agreement with the affected beneficiary, his or her parent, grandparent, guardian, or court, and the receiving pooled Medicaid payback trust.

Article IV

Administration Upon the Death of the Beneficiary or Other Termination of Trust

A. Each Sub-Account shall terminate when the funds in the Sub-Account have been exhausted and the Trust Advisor reasonably believes that the Sub-Account will not receive further deposits.

B. Each Sub-Account shall terminate upon the death of the beneficiary if the Sub-Account had not been closed during the lifetime of the beneficiary pursuant to Article IV.A. above.

- i. To the extent the funds are not retained by the Trust, the Trustee, at the direction of the Trust Advisor, shall pay from the Sub-Account attorney fees and other properly allowable costs incurred in administering and wrapping up the trust. Allowable costs include accounting of the trust to a court, completion and filing of documents, or other required actions, but not payment: (1) of the beneficiary's debts owed to third parties; (2) of the beneficiary's funeral expenses; and (3) to residual beneficiaries.
- ii. Unless the beneficiary has made adequate alternative provisions, the Trustee shall, at the direction of the Trust Advisor, pay out of the principal of the Sub-Account taxes due from the Trust to the State and/or Federal government because of the death of the beneficiary. Payment shall be limited to taxes arising from inclusion of the trust in the beneficiary's estate. The Trustee may not pay from the Sub-

Account (1) any other inheritance taxes due from the beneficiary's estate, or (2) any inheritance taxes due for residual beneficiaries.

- iii. To the extent the funds are not retained by the Trust, the state(s) will receive all amounts remaining in the Sub-Account, up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the state Medicaid plan(s). The Trustee shall comply with all state and/or federal regulations regarding notification and disbursement to any government agency. Upon the beneficiary's death and at the direction of the Trust Advisor, the Trustee shall make an appropriate, proportionate payment from the Sub-Account in payment of any claim for reimbursement from a state that has paid for medical assistance on behalf of the beneficiary under a state plan pursuant to 42 USC 1396, *et seq.* The Trust Advisor shall rely on the Designated Advocate to identify the state(s), other than Ohio, that may have a claim for reimbursement and the Trustee and the Trust Advisor shall not be liable if a state claim is not paid due to the reliance on information from the Designated Advocate.
- iv. The balance of the Sub-Account after payments are made under the applicable Paragraphs A.ii-iii of this Article shall be distributed to the individuals or other entities identified in the Joinder Agreement as “remainder distributees.”
- v. Any portion of the Sub-Account that is retained by the Trust under the terms of the Joinder Agreement and is for the benefit of CFMF shall be transferred to the Perpetual Sub-Account and shall be administered as set forth in Article V.
- vi. Any portion of the Sub-Account that is retained by the Trust under the terms of the Joinder Agreement and is for the benefit of a Non-Profit Partner shall be transferred to the Sub-Account maintained for that Non-Profit Partner and shall be administered pursuant to Article V and the agreement between the Trust Advisor and the Non-Profit Partner.

Article V

Administration of the Retained Property Sub-Account

A. The Trustee shall maintain a Retained Property Sub-Account for the receipt of funds remaining in a Sub-Account upon the death of the beneficiary whenever the Joinder Agreement directs that the funds remaining in the Sub-Account be retained by the Trust and designated for the benefit of CFMF or a Non-Profit Partner.

- i. The Trust Advisor refers to this Retained Property Sub-Account for the benefit of CFMF as the “Perpetual Trust” and shall be administered as set forth in this Article V.

ii. The Sub-Account maintained for a Non-Profit Partner shall be designated as the “[Name of the Non-Profit Partner] Retained Funds Sub-Account” and shall be administered as set forth in this Article V.

B. The Trustee shall maintain separate Retained Property Sub-Accounts for CFMF and its Non-Profit Partners, but for purposes of investment and management of funds, the Trustee shall pool all of the assets of the Retained Property Sub-Accounts with other assets of the Pooled Medicaid Payback Trust. The Trustee shall maintain records for each Sub-Account that is part of the Retained Property Sub-Account.

C. The Trustee shall distribute the principal and income of the Retained Property Sub-Accounts at the direction of the Trust Advisor, in accordance with the Trust Advisor’s policies and guidelines related to the permitted use and distribution of Retained Property Sub-Accounts. The Trust Advisor may direct the Trustee to issue distributions from the Retained Property Sub-Accounts.

D. Upon receipt of notice of death of a beneficiary whose Joinder Agreement directs remaining funds be retained by the Trust, the Trust Advisor shall direct the Trustee to transfer the remaining funds to the appropriate Retained Funds Sub-Account and shall close the Sub-Account of the deceased beneficiary.

E. If CFMF ceases to exist or is dissolved, any property remaining in the Perpetual Trust shall be applied and paid over to such other organization or organizations that qualifies as a tax-exempt organization under Internal Revenue Code Sections 501(c), 2055, or 2522 in the Trust Advisor’s sole discretion. The receiving organization or organizations, in the Trust Advisor’s sole discretion, must be serving the interests and needs of people with disabilities in a manner consistent with the purpose of this Trust Agreement.

F. If a Non-Profit Partner ceases to exist or is dissolved, any property remaining in the Non-Profit Partner’s Sub-Account shall be transferred to the Retained Property Sub-Account for the benefit of CFMF and administered according to this Article V.

Article VI Powers of the Trustee

To carry out the purpose of this Trust Agreement, the Trustee is vested with the following powers with respect to the Trust and Sub-Accounts held hereunder in addition to those powers now or hereafter conferred by law:

A. To manage, control, grant options on, sell (for cash or on deferred payments), convey, exchange, partition, divide, improve and repair trust property;

B. To borrow money and to encumber or hypothecate trust property by mortgage, deed of trust, pledge, or otherwise;

- C. To lease Trust Property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements;
- D. To carry, at the expense of the Trust, insurance of such kinds and in such amounts as the Trustee deems advisable to protect the Sub-Accounts and the Trustee against any hazard;
- E. To commence or defend such litigation with respect to the Trust or any property of the Trust Estate as the Trustee may deem advisable, at the expense of the Trust;
- F. To compromise or otherwise adjust any claims or litigation against or in favor of the Trust;
- G. Subject to a written investment policy adopted by the Trust Advisor, to invest and reinvest the Trust Estate in every kind of investment, specifically including, but not by way of limitation, corporate obligation of every kind, stocks, preferred or common, shares of investment trusts, investment companies, partnerships, and mutual funds, and mortgage participation, using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds considering the probable income as well as the probable safety of their capital, including, but not limited to any pooled trust fund administered by the Trustee, in accordance with the Collective Investment Fund Law, 12 CFR 9.18(c)(4). No less than annually, the Trustee shall review with the Trust Advisor a written investment policy regarding the investment of trust funds that has been initially approved by the Trust Advisor and Trustee. Any amendment to the written investment policy must be approved by the Trust Advisor. The Trustee shall follow the approved investment policy and any revisions that may be made from time to time to the investment policy by the Trust Advisor. The Trustee may commingle the assets of this Trust with the assets of any other Sub-Account administered by the Trustee under this Trust Agreement. The Trustee need not physically segregate the Sub-Accounts and may hold undivided interests in property with any other Sub-Accounts administered by the Trustee to facilitate investment or management of the Trust;
- H. With respect to securities held in the Trust, to have all the rights, powers and privileges of an owner, including, but not by way of limitation, the power to vote, give proxies and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, liquidations, sales and leases, and incident to such participation to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscription or conversion rights;
- I. Except as otherwise specifically provided in this Trust Agreement, the determination of all matters with respect to what is principal and income of the Trust Estate and the

apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the Ohio Principal and Income Act. Any such matter not provided for either in this Declaration of Trust or in the Principal and Income Act shall be determined by the Trustee in the Trustee's sole, absolute and uncontrolled discretion; except that notwithstanding RC 5812.01 *et seq.*, for all purposes of this Trust Agreement, any distribution attributable to any annual accounting period in excess of generally accepted notions of net income i.e., without adjustment under RC 5812.03, shall first be deemed to come from any short-term capital gain and then from any such long-term capital gain as defined in Internal Revenue Code Section 1222 generated during such annual accounting period;

J. To employ and pay reasonable compensation to agents, accountants, investment counsels, attorneys and others who in the Trustee's sole, absolute and uncontrolled discretion are necessary to fulfill the Trustee's duties hereunder in the administration of the Trust. The Trustee may follow the advice of the foregoing without liability if it has used reasonable care in selecting them;

K. To continue to hold any property, and to operate at the risk of the Trust, any business that the Trustee receives or acquires under the Trust as long as the Trustee deems advisable; provided, however, that unproductive property shall not be held as an asset of the Trust for more than a reasonable time; provided further, that the Trustee shall never incur any liability by reason of depreciating assets held or retained in this Trust, regardless of any other provisions of this instrument;

L. To liquidate assets that the Trustee receives or acquires under the Trust and convert such assets to investments as set forth in Article VI.G;

M. At the direction of the Trust Advisor, to transfer a beneficiary's Sub-Account to another trust established for the same beneficiary pursuant to 42 USC 1396p(d)(4)(C). One reason for such a transfer is if the beneficiary establishes a primary residence outside of the State of Ohio. In the event of such a transfer, no disbursements may be made from a beneficiary's Sub-Account other than to the secondary 42 U.S.C. 1396p(d)(4)(C) trust, or as payment of reasonable fees and administrative expenses, including payment of any taxes due from the trust to the State(s) or Federal government, associated with the termination of this Trust;

N. The Trustee shall pay out of Sub-Accounts whatever the Trust Advisor, in the Trust Advisor's sole, absolute, and uncontrolled discretion, deems necessary to employ and compensate for services any individual, corporation or organization that will provide necessary advice on benefits received or applied for by the beneficiary, or for whatever reason the Trust Advisor deems necessary. The Trust Advisor shall have sole, absolute, and

uncontrolled discretion as to whether the charges for such services shall be paid on a pro-rata basis from all Sub-Accounts or from one or more specific Sub-Accounts hereunder.

Article VII
Provisions Relating to Trustee

A. Until the Trustee receives written notice of the beneficiary's death or other event that may create a distribution from a Sub-Account, the Trustee shall not be liable to the beneficiary or other third parties for disbursements made in good faith.

B. As required by RC 5808.13, the Trustee shall render a report annually, or at more frequent intervals at the Trustee's discretion or if directed by the Trust Advisor, to the then-acting Designated Advocates of Pooled Medicaid Payback Sub-Accounts. The Designated Advocate shall serve as the beneficiary surrogate as defined in RC 5801.01(D). Unless the then-acting Designated Advocate of any Sub-Account delivers a written objection to the Trustee within two years of the issuance of the Trustee's report, the report shall be deemed settled and shall be final and conclusive in respect to transactions disclosed in the report to the beneficiary, the grantor, the beneficiary surrogate, and to any other individuals or entities who may be entitled to a distribution upon the death of the beneficiary or other termination of the trust. After settlement of the report by reason of the expiration of the two year period referred to above, or by the written agreement of the parties, the Trustee shall no longer be liable to said beneficiary, beneficiary surrogate, or entity with respect to transactions disclosed in the report except for the Trustee's intentional wrongdoing or fraud.

C. No bond shall be required of the Trustee.

D. The Trustee shall be entitled to fees as approved by the Trust Advisor and as set forth in a separate agreement between the Trustee and the Trust Advisor. Any change in fees shall be subject to the prior notice requirements of RC 5808.13(B)(4). Such notices shall be provided to the then-acting Designated Advocates of any Pooled Medicaid Payback Sub-Accounts. This notice may include a posting on the Trustee's or Trust Advisor's website.

Article VIII
Resignation or Removal of Trustee

A. The Trustee may resign by providing a 90-day written notice to the Trust Advisor. Such resignation shall be effective no earlier than 90 days after the Trust Advisor's receipt of the termination on a future date agreed to by the Trustee and the Trust Advisor. Unless there is sufficient reason to select an alternative resignation date, the resignation shall be effective on the last day of a month after the 90-day notice period.

B. The Trust Advisor retains the authority to remove the Trustee and appoint a successor trustee by providing a 90-day written notice to the then-acting Trustee. Such notice shall include

the effective date of the removal.

C. Unless there is a written agreement between the Trustee and Trust Advisor to the contrary, the Trustee shall be responsible for all items necessary to transfer and wrap up the trust administration by that trustee, including but not limited to, preparation of tax documents and statements, as well as assisting the successor trustee, Trust Advisor, and tax preparer in the efficient transfer of Trust Property.

D. The resigning or removed trustee shall transfer and deliver to the successor trustee the then-entire Trust Estate and it shall thereupon be discharged as trustee of this trust and shall have no further powers, discretions, rights, obligations, or duties with reference to this Trust Agreement or Trust Estate, and all such powers, discretions, rights, obligations, and duties of the resigning or removed trustee shall inure to and be binding upon the successor trustee.

E. The Trust Advisor shall choose a successor trustee who must be a corporate trustee authorized to act as a fiduciary with a combined capital, surplus, and undivided profits, per its books and records as of the date of appointment, of not less than \$20,000,000 or, if permitted under Ohio law, the successor trustee may be the Trust Advisor.

F. Any successor trustee shall succeed as trustee, with like effect as though originally named herein. All authority and powers conferred upon the Trustee hereunder shall pass to any successor trustee.

G. No successor trustee shall be liable or responsible for any acts or omissions of any prior trustee.

Article IX Trust Advisor

Community Fund Management Foundation shall serve as Trust Advisor of any Sub-Account created under this Trust Agreement and any Joinder Agreement.

A. The Trust Advisor shall have exclusive authority as follows:

- i. To remove the trustee and appoint a successor trustee;
- ii. To review distribution requests and direct the Trustee in writing to issue distributions from principal or income for the benefit of any living or deceased beneficiary;
- iii. To consider the potential impact that any distribution of principal and income may have upon the beneficiary's eligibility for Medicaid, Supplemental Security Income (SSI), and any other insurance or government assistance. The Trust Advisor should not direct any discretionary distributions that supplant or reduce government benefits that the beneficiary is receiving or may receive. It is the

grantor's intent for the Trust Advisor to make the best possible use of public and private forms of assistance in the best interest of the beneficiary.

- B. The Trust Advisor shall not waive, in whole or in part, any of the powers, duties, and authorities herein conferred.
- C. The Trust Advisor may resign and may appoint a successor nonprofit trust advisor in its place by delivering a 90-day written notice to the Trustee. In the event that a successor nonprofit trust advisor is not appointed, the Trustee shall apply to a court of appropriate jurisdiction to appoint a successor nonprofit trust advisor so that at all times there is an acting nonprofit trust advisor.
- D. No bond shall be required of the Trust Advisor.
- E. The Trust Advisor shall be compensated for its services according to its published fee schedule, as may be amended. The Trust Advisor will provide the Trustee and the then-acting Designated Advocates of any Pooled Medicaid Payback Sub-Accounts written notice of no less than forty-five days prior to any change in the Trust Advisor's fee schedule. This notice may include a posting on the Trust Advisor's website.
- F. The Trust Advisor may, in its sole, absolute, and uncontrolled discretion, employ and compensate for services any individual, corporation, or organization that will provide necessary advice for any reason it deems necessary. The Trust Advisor shall have sole, absolute, and uncontrolled discretion as to whether the charges for such services shall be paid on a pro-rata basis from all Sub-Accounts or from one or more specific Sub-Accounts.

Article X General Provisions

The following general provisions shall govern the operation and administration of the Trust Agreement and any Trusts or Sub-Accounts created hereunder:

- A. The laws of the State of Ohio shall apply to this Trust Agreement. The validity and construction of this Trust Agreement and Sub-Accounts created hereunder are governed by the laws of the State of Ohio. The principal place of administration of the Trust Agreement is Ohio.
- B. The section headings used in this Trust Agreement are utilized only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Trust Agreement or the intent of any provision therein.
- C. If it is determined that this Trust Agreement and a Joinder Agreement conflict or contradict, this Trust Agreement shall control. The Joinder Agreement may provide more details than this Trust Agreement and that in itself shall not be deemed a conflict or contradiction.
- D. Any person or agency may rely on a copy of the executed original of this Trust

Agreement as fully as he, she, or it might rely on the original document.

E. This Trust Agreement and any Sub-Account created hereunder shall be a spendthrift trust to the maximum extent permitted by law. No interest in any trust hereunder shall be subject to a beneficiary's liabilities or creditor claims, assignment, or anticipation. No interest in principal or income shall be voluntarily or involuntarily anticipated, encumbered, assigned, or subject to claims of the beneficiary's creditors, spouses, former spouses, children, or others.

F. Income accrued or unpaid on Trust Property when received into the Trust shall be treated as any other income. Income accrued or held undistributed by the Trustee at the termination of any Sub-Account created hereunder shall be distributed to the individuals or other entities as provided in the Joinder Agreement.

G. The rights, powers and obligations of the Trustee and of the owner of any life insurance policy payable to the Trust shall be as follows:

- i. The instruments representing insurance policies naming the Trust as beneficiary need not be deposited with the Trustee. The Trustee and Trust Advisor shall have no obligation with regard to the selection or monitoring of any life insurance policy. It is recommended, but not required, that a copy of the policy be provided to the Trust Advisor.
- ii. The Trustee shall not be required to pay premiums, assessments or other charges upon any of the policies or otherwise to keep them or any of them binding contracts of insurance but may do so in its sole, absolute and uncontrolled discretion.
- iii. The owner of each policy made payable to the Trust has reserved all rights, options and privileges conferred upon the owner by the terms of the policies including but not limited to the right to change the beneficiary designation thereof, to hypothecate the policy and to borrow funds from the insurer. Sickness, disability or other benefits and all dividends accruing on the policies during the insured's life may be paid by the insurer to the owner.
- iv. Upon receipt of an insured's certified death certificate, the Trustee shall use reasonable efforts to collect all sums payable under their terms, which sums upon receipt shall become principal of the Trust Estate, except interest paid by the insurer, which shall become income.
- v. The Trustee may compromise, arbitrate or otherwise adjust claims upon any of the policies. The receipt of the Trustee to any insurer shall be a full discharge, and such insurer is not required to see to the application of the proceeds.

- vi. The Trustee may employ and pay reasonable compensation to agents, accountants, investment counsel, attorneys and others who in the Trustee's sole, absolute and uncontrolled discretion are necessary to enforce rights of the Trust with respect to any insurance policies. Such payments may be made by the related Sub-Account but only at the discretion and direction of the Trust Advisor.
 - vii. The Trustee shall not be responsible for any acts or omissions of the grantors or other persons or entity in connection with or relating to any insurance policy; and shall not be required to prosecute any action to collect any insurance or to defend any action relating to any policy unless indemnified in manner and amount satisfactory to the Trustee.
- D. No principal or income held for the benefit of the beneficiary shall be alienated, disposed of or in any way encumbered while in the possession of the Trustee otherwise than by the authorized act of the Trustee, provided, however, that this paragraph shall not apply so as to prohibit the exercise of any power of appointment that may be granted to the beneficiary. The beneficiary shall not have any vested property interest in this Trust whatsoever.
- E. No purchaser or other party dealing with the Trustee shall be responsible to inquire into its authority to enter into any transaction or see to the application of any money or property paid, transferred or delivered to it.
- F. This Trust has been accepted by the Trustee in the State of Ohio, and unless otherwise provided in this instrument, its validity, construction and all rights under it shall be governed by the laws of that State.
- G. Any word used in the singular, plural, masculine, feminine or neuter, shall be either singular, plural, masculine, feminine or neuter, as the context or facts may indicate.
- H. If any provision of this instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

Article XI Indemnification

A. Except for willful default of any duty hereunder or gross negligence, the Trustee shall not be liable for any act, omission, loss, damage, or expense arising from the performance of its duties under this Trust Agreement. The Trustee is hereby relieved from any liability whatsoever to any person for any act of the Trustee at the direction of the Trust Advisor. The Trustee shall be held harmless from any liability whatsoever to any person for any action of the Trust Advisor. The Trustee shall be held harmless from all expenses incurred with respect to litigation or other

controversies caused by the Trustee's reliance on the Trust Advisor's decisions hereunder, which expenses and liability, if any, shall be borne by either the Trust, or the Trust Advisor, as determined by the Trust Advisor.

B. Except for willful default of any duty hereunder or gross negligence, the Trust Advisor shall not be liable for any act, omission, loss, damage, or expense arising from the performance of its duties under this Trust Agreement.

Article XII Amendments

A. This Trust Agreement and any Trust or Sub-Account created hereunder may be amended or restated by the Trust Advisor to effectuate the intent of this Trust Agreement, in the Trust Advisor's sole, absolute, and uncontrolled discretion, but only with the written consent of the Trustee as to any portion thereof except for the Joinder Agreement and except for those portions of this Trust Agreement that pertain to the distributions of principal and income and investments.

B. The Joinder Agreement under this Trust Agreement shall be irrevocable except that the person who established the Joinder Agreement may amend the Designated Advocates according to the Trust Advisor's policies in effect at that time.

C. Any amendments or restatements made as set forth in this Article shall be made applicable and shall retroactively apply to all existing and prior Sub-Accounts that were created prior to the effective date of this Trust Agreement. All existing Sub-Accounts shall be governed by the terms of this Trust Agreement.

D. No amendment of this Trust Agreement or any Trust or Sub-Account created hereunder shall be considered a termination of any such Trust Agreement, Trust, or Sub-Account.

Article XIII Definitions

The following definitions shall apply to this Trust Agreement:

A. "Beneficiary" means the person with a disability as defined by 42 USC 1382c(a)(3) who is identified as the beneficiary in the Joinder Agreement and for whom a Pooled Medicaid Payback Sub-Account is maintained.

B. "Grantor" shall refer to the person or entity who established and executed the Joinder Agreement. Pursuant to 42 USC 1396p(d)(4)(C), the grantor is required to be the individual who is disabled as defined by 42 USC 1382c(a)(3), or that individual's parent, grandparent, or legal guardian, or a court acting on behalf of that individual.

C. "Master Trust" refers to a pooled third-party discretionary trust for the benefit of an Ohio resident with a disability. It may be established by any party other than the beneficiary and it

may be funded with assets not belonging to the beneficiary. The Trustee and Trust Advisor have entered into a separate Trust Agreement for the Master Trust but for investment and management purposes, the Master Trust Sub-Accounts may be pooled with the Pooled Medicaid Payback Trust Sub-Accounts.

D. “Nonprofit Partner” means a not-for-profit corporation or association defined in 42 USC 1396p(D)(4)(C) which has entered into a separate agreement with the Trust Advisor and for whom a separate Non-Profit Partner Retained Property Sub-Account is maintained under this Agreement as set forth in Article V above.

E. “Nonprofit Partner Joinder Agreement” refers to a joinder agreement that allows the grantor to establish a sub-account with a Nonprofit Partner. A Nonprofit Partner Joinder Agreement shall include language which states the remainder of the Sub-Account at the death of the beneficiary shall be retained by the Trust in the Non-Profit Partner Retained Property Sub-Account.

F. “Remainder Distributee” shall refer to the individuals or entities who are identified in the Joinder Agreement to receive a distribution from the Sub-Account after the death of the beneficiary and after repayment to the state(s) Medicaid agency, if any repayment is required. A remainder distributee may include family, friends, charitable organizations, the Trust Advisor, or a Nonprofit Partner.

G. “Sub-Account” shall mean the trust account established under this Trust Agreement for the benefit of a specific Ohio resident with a disability.

H. “Trust” means all of the Pooled Medicaid Payback Sub-Accounts held under this Trust Agreement and includes all Sub-Accounts established with the Trust Advisor, including Sub-Accounts established under prior versions of this Trust Agreement. “Trust” does not include the Master Trust which is governed by a separate trust agreement between the Trust Advisor and Trustee.

I. “Trust Agreement” refers to the agreement between the Trustee and the Trust Advisor, including any agreement between the Trust Advisor and a prior trustee.

[Remainder of the page left blank intentionally.]

The Trustee and Trust Advisor do hereby accept this Trust Agreement, The Twelfth Restatement of the Community Fund Management Foundation Pooled Medicaid Payback Trust Agreement, with The Huntington National Bank as Successor Trustee and Community Fund Management Foundation as Trust Advisor upon the terms set forth in this Trust Agreement.

IN WITNESS WHEREOF, the Trustee and the Trust Advisor have signed, sealed and acknowledged The Twelfth Restatement of the Community Fund Management Foundation Pooled Medicaid Payback Trust Agreement.

Date: 9/9/19

The Huntington National Bank, Trustee

By: 

Its: Senior Vice President

Date: 09.12.2019

Community Fund Management Foundation, Trust Advisor

By: 

Its: Executive Director