**IRREVOCABLE LIVING TRUST AGREEMENT**

**INCOME CAP TRUST**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, **BENEFICIARY** (Beneficiary Name)

Living Trust Agreement, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, **TRUSTEE** (Trustee Name)

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**For the Benefit of**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, **BENEFICIARY** (Beneficiary Name)

Tax Identification Number of Trust \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (if applicable)

Prepared by:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Beneficiary Name) **INCOME CAP TRUST**

Irrevocable Living Trust Agreement

Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_

RECITALS:

This declaration of Trust is made this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of 20\_\_\_\_\_\_\_, by

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, **Grantor**  (Grantor Name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Beneficiary Name), as **Grantor,**

**establishes a trust which is effective** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Date Effective),

for the benefit of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Beneficiary Name),

the lifetime beneficiary ("**Beneficiary**").

The initial **Trustee** is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Trustee Name)

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**ARTICLE 1 - NAME OF TRUST**

This irrevocable trust shall be known as

**“The** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Beneficiary Name)

**INCOME CAP TRUST”.**

**ARTICLE 2 - PURPOSE OF THE TRUST**

The purpose of this Trust is to provide for the administration and disposition of the trust

estate during and after the lifetime of the beneficiary, in accordance with the terms and

conditions of the Trust. This Trust is created pursuant to Section 1917 (d) (4) (B) of the

Social Security Act [42 USC 1396p]. This trust document is created in order to enable the

beneficiary to qualify for Medicaid, and any provisions of this trust which are deemed to be

inconsistent or contrary to the intent of the above-referenced federal law shall be deemed to

be void and of no further force or effect. All interpretations and actions taken by the trustee

pursuant to this Trust shall be done for and with the purpose of creating, establishing, and

maintaining the beneficiary’s eligibility for Medicaid benefits.

**ARTICLE 3 - TRUST FUNDING**

**3.1 INITIAL FUNDING**. Grantor will cause to be transferred to trustee the monthly

income of the beneficiary beginning in the month of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_. Grantor

intends that the income funding this trust, together with all accretions and additions

thereto, shall be used, handled, and disposed of by the trustee and by any successor or

substitute trustee as described in this instrument.

**3.2 NO OTHER ASSETS IN TRUST**. No property other than the beneficiary’s

shall be placed in this trust. The trustee shall place no other money in the trust bank

account.

**ARTICLE 4 - DISTRIBUTION DURING BENEFICIARY’S LIFE**

**4.1 GENERAL DISTRIBUTION PLAN**. During the lifetime of the beneficiary, the

trustee shall use the beneficiary’s income placed in the trust to pay:

a. Personal Needs Allowance. The beneficiary’s personal needs allowance or

applicable OSIP standard;

b. Room and Board. The cost of room and board at facility if applicable in accordance with the OSIPM Standard

c. Administrative Costs. Reasonable administrative costs associated with the

maintenance of this trust of up to $50 per month to cover trustee fees, bank service charges, copy charges, postage, accounting and tax preparation fees, income taxes attributable to trust income, and guardianship or conservatorship fees and costs.

d. Spouse and Family. Monthly maintenance needs allowance for spouse and family.

e. Health Insurance Premium. The health insurance premiums of the beneficiary.

f. Other Reserves. Other incurred medical care costs that are not reimbursed by a

third party. Contributions to reserves limited to child support, alimony, and income taxes. Contributions to reserves for the purchase of an irrevocable burial plan with a maximum value of $5000. Contributions to reserves for a home maintenance allowance may be made on a monthly basis if the client meets the criteria of OAR 461-155-0660 or OAR 461-160-0630.

g. Patient Liability. Patient liability not to exceed the cost of waivered services or

nursing home care.

h. Excess. Any excess income may be distributed to or on behalf of the beneficiary

only to the extent allowed under the Oregon Administrative Rules governing

Medicaid assistance. Excess income may be distributed to the State to repay it for any Medicaid assistance that it provided to the beneficiary, even if recovery for the past assistance is not required by federal or state law.

**4.2 CHANGES ARE ANTICIPATED**. The cost of care will vary with changes in the

beneficiary’s income, the income cap amount, tax withholding, and allowable expenses.

The representative of the state Medicaid program may from time to time notify the trustee of

changes in the rules that affect the contribution to the cost of care. If the trustee determines

that a change in the distribution plan is warranted, the trustee shall notify the worker

assigned to the beneficiary’s case.

**ARTICLE 5 - DISTRIBUTION AT TERMINATION**

**5.1 REMAINDER BENEFICIARIES NAMED**. This trust shall cease and terminate

at the death of the beneficiary, or earlier if the trustee determines that the existence of the

trust is no longer necessary to establish or maintain Medicaid eligibility for the beneficiary.

Upon the termination of this trust, the remaining trust property shall be distributed as

follows:

a. To any State that may have provided the life beneficiary with medical

assistance up to an amount equal to the total medical assistance paid on behalf

of the life beneficiary by a state plan for Medicaid assistance or through an

approved waiver program; this provision is intended to meet the requirements

of 42 USC 1396p as amended by OBRA ’93; and

b. Any remainder after the state’s claim has been paid shall pass outside of

probate to those residuary beneficiaries named in the beneficiary’s will or

trust; however, if the beneficiary leaves no will or trust, then the remainder

shall be distributed outside of probate to those heirs as determined by the

Oregon law of intestate succession.

**5.2 WINDING UP AFFAIRS OF TRUST**. At the termination of this trust, trustee

shall wind up the affairs of the trust before distribution, paying for all administrative costs

and for preparation of the final tax return. The trustee shall have the sole discretion to claim

any tax deductions useful to reduce the taxation of the living trust. After winding up the

trust, the trustee shall distribute the remainder, if any, as provided above.

**ARTICLE 6 – TAX NATURE OF TRUST**

It is the intent of the parties hereto that this Income Cap Trust be construed as a “grantor

trust” under Internal Revenue Code Section 677(a). All income received, distributed, held,

or accumulated by this trust shall be taxable to the grantor. The trustee may distribute

directly to the taxing authority such amounts of income or principal of the trust as are

necessary to satisfy the beneficiary’s tax obligations.

**ARTICLE 7 - AUTHORITY OF TRUSTEE**

The trustee’s discretion in choosing which non-support disbursements to make is final as to

all interested parties. The trustee’s sole and independent judgment, rather than any other

person’s determination, is intended to be final.

**ARTICLE 8 - SPENDTHRIFT/NONASSIGNMENT**

No interest in the principal or income of this trust shall be anticipated, assigned or encumbered, or be subject to any creditor’s claim or to legal process prior to its actual receipt

by the beneficiary. No beneficiary shall have the power to sell, assign, transfer, encumber,

or in any other manner anticipate or dispose of the beneficiary’s interest in the trust or the

income produced thereby, prior to its actual distribution by the trustee for the benefit of the

beneficiary in the manner authorized by this agreement. No beneficiary shall have any

assignable interest in any trust created under this agreement or in the income therefrom.

Neither the trust principal nor income shall be liable for any debts of the beneficiary. The

limitations herein shall not restrict the exercise of any power of appointment or disclaimer.

**ARTICLE 9 – IRREVOCABLE NATURE OF TRUST**

Grantor retains no right to modify, change, alter, or revoke this trust, as it is intended to be

an irrevocable trust. The beneficiary has no power to modify, change, alter, or revoke the

trust.

**ARTICLE 10 - GOVERNING LAW**

The validity and construction of this agreement shall be determined under Oregon law in

effect on the date this agreement is signed.

**ARTICLE 11 - POWERS OF TRUSTEE**

The trustee shall have all powers granted to trustees by Oregon law as now existing or

later amended, except to the extent limited by the other provisions of this trust. In

addition, the trustee shall have the power:

**11.1 MANAGE ASSETS**. To manage and distribute assets.

**11.2 RETAIN ASSETS.** To retain assets.

**11.3 MANNER OF MAKING DISTRIBUTION**. To make any distribution on

behalf of the beneficiary, directly to the person or organization.

**11.4 PRINCIPAL AND INCOME**. The trustee may allocate items of income or

expenditure to either income or principal and create reserves out of income all as provided

by law, and to the extent not so provided, to allocate to income or principal or

create reserves, on a reasonable basis, and the fiduciary’s decision made in good faith

with respect thereto shall be binding and conclusive upon all persons.

**11.5 UNDISTRIBUTED INCOME**. Income accrued or undistributed at the

termination of a beneficiary’s interest in a trust shall be added to and become part of the

principal of that trust, and the rights of the beneficiary to that income shall terminate.

**11.6 EMPLOYMENT OF AGENTS**. The trustee may engage persons, including

attorneys, auditors, investment advisors, tax advisors or agents to advise or assist the

fiduciary at the cost of the trust estate.

**11.7 DO OTHER ACTS**. Except as otherwise provided in this instrument, to do all

acts that might legally be done by an individual in absolute ownership and control of

property and which in the trustee’s judgment are necessary or desirable for the proper and

advantageous management of the trust.

**11.8 TRUSTEE LIABILITY; USE OF FUNDS TO RESEARCH PROGRAMS**. It is

recognized that the trustee is not licensed nor skilled in the field of Social Services. The

trustee may seek the counsel and assistance of the beneficiary’s guardian or conservator, if

any, and any State and local agencies that have been established to assist the elderly or

disabled in similar circumstances. The trustee may use these resources to aid the beneficiary,

or the beneficiary’s guardian or conservator, as appropriate, in identifying programs

which may be of social, financial, and/or developmental assistance to the beneficiary.

However, the trustee shall not in any event be liable to beneficiary, the remainder beneficiaries

of the trust, or any other party for the trustee’s acts as trustee hereunder so long as

the trustee acts reasonably and in good faith. For example, the trustee, the beneficiary, and

the beneficiary’s guardian or conservator, if any, shall not be liable for the failure to identify

each program or resource that might be available to the beneficiary.

**11.9 POWER TO AMEND**. The trustee may amend the trust to conform with future

changes in federal or state law, to better effect the purposes of this trust.

**ARTICLE 12 - TRUST ADMINISTRATION AND COURTS**

This trust shall be administered according to its terms expeditiously and without order,

approval or other action by any court. However, the trustee or any interested person may

petition the court as allowed in this trust agreement, or by Oregon law. A court, however,

shall have the continuing jurisdiction to modify any provision of this trust to the extent

necessary to maintain the eligibility of the beneficiary for medical assistance or other public

benefits under applicable law.

**ARTICLE 13 - TRUSTEE SUCCESSION AND GENERAL ADMINISTRATIVE PROVISIONS**

**13.1 RESIGNATION OF TRUSTEE.** The trustee may resign the trusteeship at any

time. Any resignation shall be in writing, and shall become effective only after thirty

(30) days from the date of mailing of the written notice to the beneficiary and to the first

remainder beneficiary, and to the successor trustee named herein, mailed to the most current

addresses known to the trustee; now the addresses are:

**Beneficiary’s Address**: : :

­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Beneficiary Name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(City, State, Zip)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Beneficiary Telephone #)

**First Remainder Beneficiary**

State of Oregon

Department of Human Services

Estate Administration Unit

PO BOX 14021

Salem, OR 97309-5024

**Trustee Address:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Trustee Name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(City, State, Zip)

or the most current addresses then known to the trustee.

**13.2 DESIGNATION OF SUCCESSOR TRUSTEE**. The successor trustee shall

be (**Successor Trustee Name**). Any named trustee may nominate and appoint additional

successor trustees to serve if the persons initially nominated as successors are

unavailable or unwilling to serve.

**13.3 NO TRUSTEE**. If the trust at any time has no trustee, and no successor has

been nominated as described above, then a Court having jurisdiction may appoint, after

notice to the beneficiary and an opportunity to be heard, a successor trustee at the request

of any person interested in the trust, including the trust beneficiary.

**13.4 TRANSFER TO SUCCESSOR TRUSTEE**. Every successor trustee shall have

all the rights, title, powers, privileges and duties conferred on or imposed upon the original

trustee, without any conveyance or transfer. All right, title and interest to the trust property

shall immediately vest in the successor trustee, upon the successor trustee executing a

document accepting the office. The prior trustee shall, without warranty, transfer the

existing trust property to the possession and control of the successor trustee. The successor

trustee shall not have any duty to examine the records or actions of any former trustee, and

shall not be liable for the consequences of any act or failure to act of any former trustee.

**13.5 REMOVAL OF TRUSTEE**. Any interested person herein may petition any

Oregon Circuit Court for removal of any trustee. While any interested person may petition

for removal of any trustee, the decision on whether to remove any trustee shall be in the

exclusive discretion and control of an Oregon Circuit Court.

**13.6 REPLACEMENT OF TRUSTEE**. Any trustee may be replaced by a successor

trustee, upon the death, resignation, removal or incapacity of the prior trustee. Also, should

no successor trustee have been nominated, any Oregon Circuit Court shall have the power

to fill any vacancy in the trusteeship resulting from the death, resignation, removal, or

incapacity of a trustee.

**13.7 TRUSTEE’S REPORTING RESPONSIBILITY**. The trustee shall report, at least

every twelve months, to the beneficiary and his/her legal representative, if any, and to the

next successor trustee, at the most recent address then known to the trustee. The trustee’s

report shall advise of any change in the beneficiary’s eligibility for public benefit programs

and shall list all of the receipts, disbursements, and distributions occurring during the

reporting period, along with a complete list of the assets held by the trust. A copy of the

most recent bank ac-count statement and a copy of the most recently filed trust tax return

shall be attached to the accounting. The account shall be deemed to have been delivered

when it has been placed in the United States Mail addressed to that person at the person’s

last known address.

**13.8 AVAILABILITY OF RECORDS**. The records of the trustee, such as all trust

documentation and annual accountings, shall be made available to the trust beneficiary,

and/or the beneficiary’s legal representative, and the trust remaindermen, including but not

limited to the State of Oregon, Department of Human Services, within 10 days of notice to

the trustee.

**13.9 TRUSTEE COMPENSATION**. The trustee may receive reasonable compensation

and reimbursement for expenses such as travel costs (if automobile, at the then-

current IRS mileage expense allowance), postage, copy and fax charges, and long distance

telephone charges required to administer the trust estate.

**13.10 TRUSTEE INDEMNIFICATION**. Trustee is entitled to be indemnified, to his

or her reasonable satisfaction, against liabilities lawfully incurred in the administration of

this trust, at the cost of the trust.

**13.11 BOND**. No bond shall be required of any trustee.

**DATED** this \_\_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. 20XX

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

GRANTOR

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

TRUSTEE

**ACCEPTANCE OF OFFICE BY TRUSTEE**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Trustee Name), the named trustee in this instrument, accept the office and responsibilities of trustee.

 DATED this \_\_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. 20XX

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Trustee Name), Trustee

**SCHEDULE A**

of the

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Beneficiary Name) **Income Cap Trust**

**ASSETS TRANSFERRED TO TRUST AT TIME OF CREATION**

The principal of this trust will be composed of bank deposits from the net monthly income, including pensions and social security benefits, of Beneficiary.

These funds will be kept in a bank account opened in the name of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_“(Trustee Name),

**Trustee of The**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Beneficiary Name)

**Income Cap Trust”** under the tax identification number of the trust( if applicable)

**COMMITMENT TO TRANSFER**

I promise to cause the income of Beneficiary to be transferred to the trustee of

**The**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Beneficiary Name) **Income Cap Trust**

 DATED \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Date Executed)

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Grantor