

**FAMILY SPECIAL-NEEDS TRUST**

IRREVOCABLE TRUST AGREEMENT dated this \_\_\_\_ day of \_\_\_\_\_, 200 between  
("Grantor") \_\_\_\_\_ residing \_\_\_\_\_ at \_\_\_\_\_  
and \_\_\_\_\_ ("Trustee") residing \_\_\_\_\_ at \_\_\_\_\_

ARTICLE 1: CREATION OF TRUST

- 1.1 **Trust Property.** The Grantor hereby establishes an irrevocable trust and assigns, conveys, transfers and delivers to the Trustee (as hereinafter named) the property described in Schedule A (the "Trust Property") attached hereto and the Trustee accepts such property as the initial Trust estate. The Trust Property shall be administered and distributed upon the terms and conditions set forth herein.
- 1.2 **Additions to Trust.** Grantor or any other person or entity may from time to time transfer additional property to the Trustee to be added to the Trust Property upon the terms of this Trust Agreement.

ARTICLE 2: MANAGEMENT AND DISPOSITION OF TRUST ESTATE

- 2.1 It is Grantor's primary concern in drafting this Special Needs Trust that it continue in existence as a supplemental and emergency fund to public assistance for \_\_\_\_\_ (the "Beneficiary"), throughout her life. There exists living needs such as travel, entertainment, and outdoor recreation which public benefit programs for the disabled do not provide. It is vitally important the Grantor's child have these programs and enrichments in order to maintain a level of human dignity and humane care. If this Trust were to be invaded by creditors, subjected to any liens or encumbrances, or cause public benefits to be terminated, it is likely that the Trust corpus would be depleted prior to \_\_\_\_\_ death, especially since the cost of care for developmentally disabled persons is high. In this event, there would be no coverage for emergencies or supplementation for basic needs. The following Trust provisions should be interpreted in light of these concerns and Grantor's stated intent as Grantor is fully aware that the assets of this Trust are insufficient to independently provide for Beneficiary's basic care. This trust is specifically designed to supplement and not supplant the benefits of any public assistance programs to which Beneficiary is or will be entitled. These programs include, but are not limited to, Supplemental Security Income (SSI), Medicaid and Medicare, Federal Social Security Disability Insurance (SSDI) or other programs funded by the local county, state, or federal government which offer rehabilitative or other services.
- 2.2 The Trustee may pay to or apply for the benefit of the Beneficiary, for Beneficiary's lifetime, such amounts from the principal or income, up to the whole thereof, as the Trustee in Trustee's sole discretion may from time to time deem necessary or advisable for the satisfaction of Beneficiary's Special Needs, and any income not distributed shall be added to the principal. As used in this instrument, the term "Special Needs" refers to the requisites for maintaining

Beneficiary's good health, safety and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office or department of the State of \_\_\_\_\_, or of any other state, or of the United States. "Special Needs" shall not include food, clothing or shelter, or anything not an excluded item of income or resources but shall include, but not be limited to, special equipment, programs of training, education and rehabilitation, spending money, eyeglasses, monetary requirements to enhance Beneficiary's self-esteem, situational and essential dietary needs, travel needs and recreation, which are excluded resources under such programs, or not convertible to cash or food, clothing or shelter. No payment of principal or interest of this Trust shall be made to Beneficiary if such payment would disqualify or make Beneficiary ineligible for the programs described in this Trust.

- 2.3 The Trustee shall, in the exercise of Trustee's best judgment and fiduciary duty, seek support and maintenance for Beneficiary from all available public resources, including Supplemental Security Income (SSI), Medicaid and Medicare, Federal Social Security Disability Insurance (SSDI) and the appropriate regional center for the disabled. In making distributions to Beneficiary for special needs as herein defined, the Trustee shall take into consideration the applicable resource and income limitations of the public assistance program for which Beneficiary is eligible.
- 2.4 No part of the corpus of this Trust created herein shall be used to supplant or replace public assistance benefits of any county, state, federal, or other governmental agency which has the legal responsibility to serve persons with disabilities which are the same or similar to the impairment of Beneficiary herein. For purposes of determining Beneficiary's Medicaid or public assistance eligibility, no part of the principal or undistributed income of the Trust estate shall be considered available to Beneficiary. In the event that the Trustee is requested to release principal or income of the Trust to or on behalf of Beneficiary to pay for food, clothing or shelter or for equipment, medication or services which Medicaid is authorized to provide (were it not for the existence of this Trust), or in the event the Trustee is requested to petition the Court or any other administrative agency for the release of Trust principal or income for this purpose, the Trustee is authorized to deny such request and is authorized in his/her discretion to take whatever administrative and/or judicial steps may be necessary to continue the public assistance Medicaid eligibility of Beneficiary, including obtaining instructions from a court of competent jurisdiction ruling that the Trust corpus is not available to him/her for public assistance programs or Medicaid eligibility purposes. Any expenses of the Trustee in this regard, including reasonable attorney's fees, shall be properly charged to the Trust estate. All references in this instrument to Medicaid shall include any other state's Medicaid program equivalent.
- 2.5 No interest in the principal or income of this Trust shall be anticipated, assigned or encumbered, or shall be subject to any creditor's claim or to legal process, prior to its actual receipt by Beneficiary. Furthermore, because this Trust is to be conserved and maintained for the special needs of Beneficiary throughout his or her life, no part of the corpus thereof, neither principal nor undistributed income, shall be construed as part of Beneficiary's "estate" or be subject to the claims or voluntary or involuntary creditors for the provision of care and services, including residential care by any public entity, office, department or agency of the State of \_\_\_\_\_, or of any other state, or of the United States or any other governmental agency.
- 2.6 Notwithstanding anything to the contrary contained in other provisions of this Trust, in the event that the existence of this Trust has the effect of rendering Beneficiary ineligible for Supplemental Security Income (SSI), Medicaid and Medicare, or any other program of public benefits the Trustee is authorized (but not required) to terminate this Trust and the undistributed balance of the Trust estate shall be distributed, free of Trust, to the Grantor's children other than the

Beneficiary. If one or more of the Grantor's children other than the Beneficiary are not living at such time, his or her share shall be distributed to his or her issue, per stirpes. If there be no such issue surviving, then such share shall be distributed to Grantor's surviving child, other than the Beneficiary, or if there be none, then to such child's (other than the Beneficiary's) issue. If at such time the Grantor has no surviving child or issue of deceased children, other than the Beneficiary's, then all of such balance of principal and undistributed income shall be distributed as if the Grantor died intestate at the same time of the Beneficiary's death and all of such balance of principal and undistributed income were to be distributed in accordance with the laws of intestacy as applied to the Grantor. In determining whether the existence of the Trust has the effect of rendering Beneficiary ineligible for SSI, Medicaid and Medicare, or any other program of public benefits, the Trustee is hereby granted full and complete discretion to initiate either administrative or judicial proceedings, or both, for the purpose of determining eligibility and all costs relating thereto, including reasonable attorney's fees, shall be a proper charge to the Trust estate.

- 2.7 Subject to the provisions of paragraph 2.8 herein, this Trust shall cease and terminate upon the death of Beneficiary, and thereupon, the Trustee shall distribute and deliver all of the principal and undistributed income in equal shares to the Grantor's children other than the Beneficiary. If one or more of the Grantor's children other than the Beneficiary are not living at such time, his or her share shall be distributed to his or her issue, per stirpes. If there be no such issue surviving, then such share shall be distributed to Grantor's surviving child or if there be none, then to such child's (other than the Beneficiary's) issue. If at such time the Grantor has no surviving child or issue of deceased children, other than the Beneficiary's, then all of such balance of principal and undistributed income shall be distributed as if the Grantor died intestate at the same time of the Beneficiary's death and all of such balance of principal and undistributed income were to be distributed in accordance with the laws of intestacy as applied to the Grantor.
- 2.8 Upon the death of Beneficiary, the Trustee may pay any death taxes regarding assets, passing in accordance with these Trust provisions or otherwise, and all expenses of said Beneficiary's last illness and funeral, and expenses related to administration and distribution of the Trust estate if, in the Trustee's discretion, other satisfactory provisions have not been made for the payment of such expenses. The Trustee shall make no payment for expenses incurred prior to Beneficiary's death if the Trustee shall determine in discretion that payment therefore is the obligation of any county, state, federal, or other governmental agency which has the legal responsibility to serve persons with disabilities which are the same or similar to the impairment of Beneficiary herein.

### ARTICLE 3: TRUSTEE POWERS

- 3.1 In the administration of this Trust, the Trustee shall, in addition to the powers provided by the laws of the state of \_\_\_\_\_, as the same may be in force as of the date first set forth above, or as may thereafter be amended, have the following express powers:
- 3.1.1 To retain indefinitely any investments and to invest and reinvest in stocks, shares and obligations of corporations, specifically including the retention of shares of stock in closely-held corporations, of unincorporated associates or trusts, and of investment companies, without giving notice to any beneficiary, or in any other kind of personal or real property, notwithstanding the fact that any or all of the investments made or retained are of a character or size which, but for this express authority, would be unauthorized under the laws of the state of \_\_\_\_\_.
- 3.1.2 To make distribution in cash or in kind, in real or personal property, or partially in each.

- 3.1.3 To delegate discretionary powers to agents, remunerate them and pay their expenses, employ and pay the compensation of accountants, custodians, legal and investment counsel.
  - 3.1.4 To sell, to exchange, to lease and to make contracts concerning real or personal property for such considerations and upon such terms as to credit or otherwise as the Trustee may determine; to execute deeds, transfers, leases and other instruments of any kind.
  - 3.1.5 To improve or develop real estate, to construct, alter or repair buildings or structures on real estate; to settle boundary lines and easements and other rights with respect to real estate; to partition and to join with co-owners in dealing with real estate in any way.
  - 3.1.6 To compromise claims.
  - 3.1.7 To apportion receipts and disbursements of the Trust estate between principal and income in such manner as he/she may deem advisable, in his/her absolute discretion, including the power to pay as income, the whole of the interest, dividend, rent or similar receipts from property, whether wasting or not and although bought or taken at a value above par; to treat as income or principal or to apportion between them stock or securities and proceeds from the sale of real estate, although such real estate may have been wholly or partly unproductive.
- 3.2 If pursuant to the provisions of this Trust, all or any part thereof shall vest in absolute ownership in minor or minors, Trustee in his or her sole discretion, and without authorization by any court, is hereby authorized:
- 3.2.1 To defer, in whole or in part, payment or distribution of any or all property to which such minor may be entitled holding the whole or the undistributed portion thereof, as a separate share for such minor, with all the powers and authority conferred by the provisions of this Trust, including, without limitations, the power to retain, invest and reinvest, both principal and accumulated income, without being limited to investments authorized by law for Trust funds.
  - 3.2.2 To pay, distribute or apply the whole or any part of any new income or principal, at any time held for such minor, including accumulated income, to or for the property support, maintenance, education, and welfare of such minor, either directly or by making payment or distribution thereof to the Guardian or other legal representative, wherever appointed, of such minor to such minor personally, and to pay or distribute any balance thereof to such minor when such minor reaches the age of eighteen (18) years, or in case such minor shall die before distribution of all property held under this Article to the Executor or Administrator of the Estate of such minor, the receipt of the person or persons to whom any such payment or distribution is so made being sufficient discharge thereof, even though the Trustee may be such person or persons.

The authority conferred upon the Trustee by this paragraph shall be construed as a power only, and shall not operate to suspend the absolute ownership of such property by such minor or to prevent the absolute vesting thereof in such minor. Any law to the contrary notwithstanding, the Trustee shall not be required to render and file annual accounting with respect to property so held under this paragraph.

ARTICLE 4: TRUSTEE

- 4.1 **Trustee.** \_\_\_\_\_ hereby agrees to serve as Trustee of the Trust created herein.
- 4.2 **Alternate Trustee.**
- 4.2.1 **Designation.** In the event a vacancy exists in the office of Trustee, for any reason, \_\_\_\_\_ shall act as alternate Trustee.
- 4.2.2 **Eligible Substitutes.** Any natural person or corporation authorized to administer trusts shall be eligible to serve as an alternate Trustee hereunder; provided, however, that under no circumstances shall the Beneficiary of the Trust hereby created be eligible to serve as Trustee hereunder.
- 4.3 **Powers of Alternate Trustees.** Every alternate Trustee shall have all the title, rights, powers, privileges and duties herein conferred or imposed upon the original Trustee without any act of conveyance or transfer. No alternate Trustee shall be obligated to examine the accounts, records and acts of any previous Trustee or any allocation of the Trust estate, no shall such alternate Trustee be required to proceed against a previous Trustee for any act or omission to act on the part of such previous Trustee.
- 4.4 **Bonds Waived.** The Trustee, including any alternate Trustee, shall be permitted to qualify without the necessity of giving a bond or other undertaking in the sate of \_\_\_\_\_ or any other jurisdiction for the faithful performance of such Trustee's duties, or if any bond shall be required by law, statute or rule of court, without the necessary of sureties thereon.

ARTICLE 5: CONSTRUCTIONAL RULES

- 5.1 **Governing Law.** The laws of \_\_\_\_\_ shall govern all questions as to the validity and construction of all trusts created by this instrument.
- 5.2 **Gender Neutral** As used in this trust provision, words in any gender shall be deemed to include the other gender; the singular shall be deemed to include the plural, and vice versa.
- 5.3 **Headings.** The section headings of this Trust Agreement are for reference purposes only and are to be given no effect in the constitution of interpretation of this Agreement.

ARTICLE 6: TRUST IRREVOCABLE

The Trust hereby established is irrevocable. The Grantor reserves no right to amend, modify, or revoke this Trust in whole or in part.

ARTICLE 7: BINDING EFFECT

This instrument shall bind the respective heirs, personal representatives, successors and assigns of Grantor and the Trustee.

IN WITNESS WHEREOF, the parties have executed this instrument on the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_, Grantor

\_\_\_\_\_  
\_\_\_\_\_, Trustee

**SCHEDULE A**

The following assets are hereby transferred and conveyed to the Trustees as the initial Trust Estate to be held, administered and distributed in accordance with the terms of the foregoing Declaration of Trust:

Cash  \_\_\_\_\_

Other

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## Additional Optional Provisions

During the lifetime of the Grantor, \_\_\_\_\_ shall have the right to withdraw an amount from principal as hereinafter set forth. \_\_\_\_\_ shall have the right to withdraw the value of any premium paid or property transferred during the calendar year, provided that the total amount which \_\_\_\_\_ may withdraw during the calendar year shall not exceed the greater of \$\_\_\_\_\_ or \_\_\_\_\_% of the fair market value of the Trust. Such right shall be exercisable for a period commencing with the date property is transferred or a premium is paid and ending thirty (30) days after receipt of notice under paragraph 2.4, or if notice has been waived, thirty (30) days after the actual receipt of such property by the Trustees or the payment of such premium. If such right to withdraw has not been exercised within said thirty (30) day period, it shall lapse. For purposes of this Article 2, the Term "premium" shall not include any premium paid by the Trustees.

If \_\_\_\_\_ wishes to exercise his/her right of withdrawal, he or she shall do so by delivering to the Trustees a separate signed instrument for each year. The power of withdrawal shall terminate if \_\_\_\_\_ dies or becomes bankrupt. If there is insufficient cash to satisfy any such demand from principal, the Trustees shall take such action as they shall deem necessary or appropriate to convert sufficient assets of the Trust into cash, to borrow, or to distribute assets in kind, including any insurance contracts held in trust, to the extent necessary to satisfy such demands.

- 2.4 In each calendar year that property is transferred to the Trust or a premium is paid by anyone other than the Trustees, the Trustees shall notify \_\_\_\_\_ of his or her rights of withdrawal, if any, under paragraph 2.3 of this Article. In the event that \_\_\_\_\_ is under the age of eighteen (18) years and has a right of withdrawal, the Trustees shall notify \_\_\_\_\_'s parent or guardian on his or her behalf. The Trustees' notice may include a statement of anticipated premium payments or additions to the Trust which will be made in that calendar year. An adult beneficiary, or a parent or guardian on behalf of a minor beneficiary, may, after receiving such notice at least once, waive further notice by an instrument in writing delivered to the Trustees.

In addition to all other powers referred to herein, the Trustee shall have the power to purchase and acquire life insurance policies of any type on the life of the Grantor. Any such life insurance policies will have the Trustee named as owner and beneficiary.

- 2.6 The Trustee shall be vested with all rights, powers, options, and privileges in and to any insurance policies which are part of the Trust, and the Trustee may exercise any and all of such rights, powers, options, and privileges as fully as any owner of such policies might do. The Grantor shall have no rights, powers, options, and privileges with respect to any insurance policies which are a part of this Trust.
- 2.7 The Trustee may, in his sole and absolute discretion, use income toward the payment of premiums on the policies assigned or owned by the Trust.
- 2.8 If at any time the net income derived by the Trustee shall be insufficient to pay the premiums on the policies of insurance, the Trustee shall promptly notify the Grantor in writing of the amount necessary to pay the premiums, and, if the Grantor shall fail to advance sufficient funds to pay the premiums, the Trustee is authorized, but shall be under no obligation, to sell at public or private



sale a sufficient portion of the Trust principal to obtain the necessary funds or to borrow on the collateral of all or any part of the Trust principal. If at any time the net income derived by the Trust, together with any sums furnished by the Grantor, is insufficient to pay the premiums on the policies of insurance, the Trustee shall be under no obligation to pay the premiums on any of them and shall not be liable in case the premiums are not paid. The Trustee is also authorized, but is not obligated, to surrender any policies of insurance for their cash surrender value or to borrow on the policies and to make premium payments from the funds so derived, or to convert any policy upon which they are unable, by reason of insufficient funds, to pay the premium, into a paid-up policy in whatever amount may be provided by the terms of the policy.

- 2.9 Upon the death of the Grantor, the Trustee shall take all necessary steps to collect the proceeds of the insurance policies, including double indemnity benefits if they are payable. To facilitate prompt collection, in addition to all other powers referred to herein, the Trustee shall have the power and discretion necessary to collect the proceeds, including, but not limited to, the following powers:
- 2.9.1 To execute and deliver releases, receipts, and all other necessary papers.
- 2.9.2 To compromise or adjust any disputed claim in any manner as in his sole discretion seems just.
- 2.9.3 To bring suit upon any policy, the payment of which is contested by the insurer, and to pay the expenses of any suit, including attorney's fees, from the principal of the Trust estate, or from any other insurance proceeds in his/her hands, or from net income which is in his/her hands, provided that the Trustee shall be under no obligation or duty to bring suit unless it is advisable in the opinion of his/her counsel, and unless he/she shall have either adequate funds with which to pay the expenses of the suit or indemnification to his/her satisfaction against any loss, liability, or expenses which may be incurred in bringing the suit. Upon the collection of the proceeds of any insurance policy, the Trustee shall add the proceeds to the Trust estate and shall hold them in trust, to manage, invest, reinvest, collect the income, and dispose of the principal and any income in the manner provided in this Article 2.