

Trust Agreement

This TRUST AGREEMENT made this ____ day of _____, 2017, by and between GUARDIAN, as Guardian of PERSON, pursuant to Order of the Supreme Court --- County, as Grantor and GUARDIAN as Trustee. The Guardian resides at --- The Beneficiary resides at---

TRUST PURPOSE

1.0 TRUST NAME:

The Trust shall be known as the PERSON Special Needs Trust.

1.1 PURPOSE OF TRUST:

The Beneficiary of the Trust is PERSON. The purpose of the Trust is that the Trust's assets be used to supplement, not supplant, impair or diminish any benefits or assistance of any Federal, State, County, City, or other governmental entity for which the Beneficiary may otherwise be eligible or which the Beneficiary may be receiving. The Trust is intended to conform with New York State EPTL § 7-1.12, N.Y. Soc. Serv. Law §366, and 42 U.S.C. § 1396p(d)(4)(A) and 42 U.S.C. § 1382b(e).

1.2 DECLARATION OF IRREVOCABILITY:

The Trust shall be irrevocable and may not at any time be altered, amended or revoked.

1.3 EPTL § 7-1.6:

EPTL 7-1.6 or any successor statute, or any similar statute of any other jurisdiction, shall not be applied by any court having jurisdiction of an inter-vivos or testamentary trust to compel, against the Trustee's discretion, the payment or application of the trust principal to or for the benefit of PERSON, or any beneficiary for any reason whatsoever.

SECTION 2 - USE OF TRUST INCOME AND PRINCIPAL

2.0 ADMINISTRATION OF TRUST DURING LIFETIME OF BENEFICIARY:

The property shall be held in trust for the Beneficiary, and the Trustee shall collect income and, after deducting all charges and expenses attributed thereto, shall apply for the benefit of the Beneficiary, in-kind, so much of the income and principal (even to the extent of the whole) as the Trustee deem advisable in its sole and absolute discretion as set forth in the Order and Judgment Appointing Guardian. The Trustee shall add the balance of net income not paid or applied to the principal of the Trust.

2.1 AVAILABILITY OF OTHER BENEFITS:

Consistent with the Trust's purpose, before expending any amounts from the net income and/or principal of this Trust, the Trustee shall consider the availability of all benefits from government or private assistance programs for which the Beneficiary may be eligible. The Trustee, where appropriate and to the extent possible, shall endeavor to maximize the collection and facilitate the distribution of these benefits for the benefit of the Beneficiary.

2.2 USE OF INCOME OR PRINCIPAL:

None of the income or principal of this Trust shall be applied in such a manner as to supplant, impair or diminish any governmental benefits or assistance for which the beneficiary may be eligible or which the beneficiary may be receiving, unless the Trustee, in her sole and absolute discretion determines that such use of trust assets is beneficial to the beneficiary.

2.3 POWER TO EXECUTE OR ASSIGN DISTRIBUTIONS:

The Beneficiary does not have the power to assign, encumber, direct, distribute or authorize distributions from this Trust.

2.4 FOOD AND SHELTER:

Notwithstanding the above provisions, the Trustee may make distributions to meet the Beneficiary's need for food, shelter, health care, or other personal needs, even if those distributions will impair or diminish the Beneficiary's receipt or eligibility for government benefits or assistance if the Trustee determines that the distributions will better meet the Beneficiary's needs, and it is in the Beneficiary's best interests, notwithstanding the consequent effect on the Beneficiary's eligibility for, or receipt of benefits.

2.5 NULLIFICATION OF § 2.4:

However, if the mere existence of this authority to make distributions will result in a reduction or loss of the Beneficiary's entitlement program benefits, regardless of whether the Trustee actually exercises this discretion, the preceding paragraph (2.4) shall be null and void and the Trustee's authority to make these distributions shall terminate and the Trustee authority to make distributions shall be limited to purchasing supplemental goods and services in a manner that will not adversely affect the Beneficiary's government benefits.

2.6 ADDITIONS TO INCOME AND PRINCIPAL:

With the Trustee's consent, any person may, at any time, from time to time, by Court order, assignment gift, transfer, Deed or Will, provide income or add to the principal of the Trust created herein, and any property so added shall be held, administered and distributed under the terms of this Trust. The Trustee shall execute documents necessary to accept additional contributions to the trust and shall designate the additions on an amended Schedule A of this trust.

SECTION 3 - DISTRIBUTION UPON DEATH OF BENEFICIARY

3.0 DISPOSITION OF TRUST ON DEATH OF BENEFICIARY:

The Trust shall terminate upon the death of PERSON. The Trustee shall distribute any principal and accumulated interest that then remain in the Trust pursuant to paragraphs 3.1 and 3.2 of this Trust.

3.1 REIMBURSEMENT TO THE STATE:

The New York State Department of Health, or other appropriate Medicaid entity within New York State, and any other state in which the beneficiary received Medicaid shall receive all amounts remaining in the trust, up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State Medicaid plans(s). The States shall have priority over payment of other debts and administrative expenses except as listed in SI 01120.203B.10. If the amount remaining in the Trust is not sufficient to completely repay all states, and if the beneficiary received Medicaid in more than one state, then the amount distributed to each state shall be based on each state's proportionate share of the total amount of Medicaid benefits paid by all states on behalf of the Beneficiary.

3.2 DISTRIBUTION AFTER REIMBURSEMENT TO STATE:

All remaining principal and accumulated income shall be paid to the legal representative of the Estate of the Beneficiary.

SECTION 4 - TRUSTEE

4.0 TRUSTEE:

GUARDIAN is appointed Trustee of this Trust.

4.1 CONSENT OF TRUSTEE:

The Trustee shall file with the Clerk of the Supreme Court, Kings County, a "Consent to Act" as Trustee, Oath and Designation, duly acknowledged.

4.2 BOND:

The Trustee shall execute and file a bond pursuant to the Order of the Supreme Court, Kings County, Guardianship Part authorizing this Trust, to be approved by the Court, and shall submit a copy of such bond to DSS, OPA, IREA, Supplemental Needs Trust Program, 250 Church Street, New York, N.Y. 10013-2429, Attn: Director, by regular mail, and shall also include any additional or subsequent replacement bonds required by Order of the Court in the annual accountings to be sent to the New York City Human Resources Administration at the above address.

4.3 RESIGNATION:

A Trustee may resign by giving written notice, a signed and acknowledged instrument, delivered to (i) the Supreme Court, Kings County; (ii) the Guardian of the beneficiary, if any; (iii) the beneficiary; (iv) the Successor Trustees; (v) DSS, OPA, IREA, Supplemental Needs Trust Program, 250 Church Street, New York, N.Y. 10013-2429, Attn: Director, and by Registered or Certified Mail, Return Receipt Requested to New York City Department of Social Services, Attn: General Counsel, 150 Greenwich Street, New York, New York 10007. The resignation is subject to the approval of the Supreme Court, Kings County.

4.4 DISCHARGE AND FINAL ACCOUNTING OF TRUSTEE:

No Trustee shall be discharged and released from office and bond, except upon filing a Final Accounting in the form and in the manner required by §81.33 of the Mental Hygiene Law, and obtaining judicial approval of same. The Final Accounting shall be delivered to DSS, OPA, IREA, Supplemental Needs Trust Program, 250 Church Street, New York, NY 10013, Attn: Director, and by Registered or Certified Mail, return receipt requested to NYC Human Resources Administration/Department of Social Services, Office of Legal Affairs, 150 Greenwich Street, 38th Floor, New York, NY 10007, and obtaining approval of the final accounting with the New York City Human Resources Administration.

4.5 ANNUAL ACCOUNTING:

The Trustee shall file during the month of May in the Office of the Clerk of the County of Kings, an annual report in the form and manner required by §81.31 of the Mental Hygiene Law, and such annual accountings shall be examined in the manner required by §81.32 of the Mental Hygiene Law. Such annual accounting shall also be sent to DSS, OPA, IREA, Supplemental Needs Trust Program 250 Church Street, New York, NY 10013, Attn: Director, and by Registered or Certified Mail, return receipt requested to NYC Human Resources Administration/Department of Social Services, Office of Legal Affairs, 150 Greenwich Street,

38th Floor, New York, NY 10007, and to the Court Examiner appointed in the Order and Judgment Appointing Guardian.

4.6 CONTINUING JURISDICTION:

The Supreme Court, Kings County, shall have continuing jurisdiction over the interpretation, administration and operation of this Trust, and all other related matters.

4.7 POWERS OF TRUSTEE:

In addition to any powers which may be conferred upon the Trustee under the law of the State of New York in effect during the life of this Trust, the Trustee shall have all those discretionary powers mentioned in EPTL §11.1.1 et. seq., or any successor statute or statutes governing the discretion of a Trustee, so as to confer upon the Trustee the broadest possible powers available for the management of the Trust assets. In the event that the Trustee wishes to exercise powers beyond the express and implied powers of EPTL Article 11, the Trustee therefor shall seek and must obtain judicial approval.

4.8 APPOINTMENT OF A SUCCESSOR TRUSTEE:

Appointment of a successor Trustee not named in this Trust shall be upon application to the Supreme Court, Kings County, with notice to the NYC Human Resources Administration/Department of Social Services.

4.9 COMMISSIONS OF TRUSTEE:

The Trustee shall receive compensation and/or commissions as determined by the Supreme Court, Kings County.

SECTION 5 - MISCELLANEOUS PROVISIONS

5.0 GOVERNING LAW:

This Trust Agreement shall be interpreted and the administration of the Trust shall be governed by the laws of the State of New York; provided, however, that Federal law shall govern any matter alluded to herein which shall relate to or involve government entitlements such as SSI, Medicaid, and or other federal benefit programs.

5.1 NOTIFICATIONS AND NOTICE TO SOCIAL SERVICES DISTRICT:

The Trustee shall provide the required notification to the Social Services District in accordance with the requirements of Section 360-4.5 of Title 18 of the Official Regulations of the State Department of Social Services, and any other applicable statutes or regulations, as they may be amended. These regulations currently require notification of the creation or funding of the trust, proof of bond, if required, the death of the beneficiary, and in the case of trusts exceeding \$100,000, in advance of transactions that tend to substantially deplete the trust principal (as defined in that section), and in advance of transactions for less than fair market value. In addition, the Trustee shall give the Department of Social Services proper notice of any court application for any matter relating to the interpretation, administration and operation of the Trust. All notifications and notices hereunder shall be made as follows: (1) by registered or certified mail with return receipt requested to NYC Human Resources Administration/Department of Social Services, Office of Legal Affairs, 150 Greenwich Street, 38th Floor, New York, NY 10007; and (2) by regular mail to DSS OPA IREA, Supplemental Needs Trust Monitoring Unit, 250 Church Street, New York, N.Y. 10013-3429, Att: , Director,

5.2 SAVINGS CLAUSE:

If it is determined that any provision hereof shall in any way violate any applicable law, such determination shall not impair the validity of the remaining provisions of the Trust.

5.3 USAGE:

In construing this Trust, feminine or neuter pronouns shall be substituted for those of the masculine form and vice versa, and the plural for the singular and vice versa in any case in which the context may require.

5.4 HEADINGS:

Any headings or captions in the Trust are for reference only, and shall not expand, limit, change, or affect the meaning of any provision of the Trust.

5.5 BINDING EFFECT:

This Trust shall be binding upon the estate, executors, administrators and assigns of the Grantor and any individual Trustee, and upon any Successor Trustee.