

THIRD PARTY GUARDIAN SPECIAL NEEDS TRUST

THIS DECLARATION OF TRUST is made on May 27, 2015, by Guardian Trust Foundation, Inc., a Non-Profit Corporation organized under the laws of the State of Florida as Settlor and Trustee with principal offices located at 901 Chestnut Street, Suite C, Clearwater, Florida 33756, (800) 669-2499. The name of the Trust established under this Declaration is the **Third Party Guardian Special Needs Trust** (hereinafter sometimes referred to as the "Trust"). In accordance with section 2.4 of this Trust Agreement, modifications were made on April 19, 2019 to continue to comply with its purposes and intent to function as a Pooled Third Party Special Needs Trust.

ARTICLE I DEFINITIONS

- 1.1. "Settlor" means Guardian Trust Foundation, Inc., a Florida non-profit corporation with principal offices located at 901 Chestnut Street, Suite C, Clearwater, Florida 33756, (800) 669-2499, who shall be responsible for appointment of all Trustees and therefore the ultimate management of this Trust.
- 1.2. "Trustee" means Guardian Trust Foundation, Inc., or its successor or successors.
- 1.3. "Co-Trustee" means a person, entity, or both, selected by the Trustee to assist with the management, administration, allocation, and disbursement of Trust assets and property.
- 1.4. "Grantor" means a person who executes a Joinder Agreement to establish a Trust sub-account for a Beneficiary, or who contributes property to the Trust, either through gift, bequest, or devise, for the benefit of a specified Beneficiary.
- 1.5. "Beneficiary" means a person for which the trust sub-account is established. Such person may be, but is not required to be, disabled as defined in § 1614 (a)(3) of the Social Security Act (42 U.S.C. § 1382c(a)(3)), who qualifies under 42 U.S.C. § 1396p, as amended in the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) and the Foster Care Independence Act of 1999 (FCIA '99), and is the person for whom a Grantor shall specify as the recipient of services and benefits under any one of the particular Trust sub-accounts created within this Trust by such Grantor.
- 1.6. "Joinder Agreement" means the individual written agreement between the Trustee and a Grantor by which the Grantor establishes a Trust sub-account for the sole benefit of a Beneficiary.
- 1.7. "Trust sub-account" means that portion of the entire Trust estate that is established and managed for the benefit of a specified Beneficiary.
- 1.8. "Government assistance" means all services, benefits, medical care, financial assistance, and any other assistance that may be provided by any county, state, or federal agency to or on behalf of a Beneficiary. Such assistance includes, but is not limited to, the Supplemental Security Income program (SSI), the Old Age Survivor and Disability Insurance program (OASDI), the Social Security Disability Insurance program (SSDI), and the Medicaid program including the Florida Statewide Medicaid Managed Care Program for Long Term Care (SMMC-LTC), Medicaid Institutional Care Program (ICP), Home and Community Based Services (HCBS), or any other public assistance programs of the State of Florida or any other state of the United States, together

with any additional, similar, or successor public programs.

- 1.9. "Non-support payments" means payments made by the Trustee for supplemental needs or supplemental care as defined below.
- 1.10. "Legal Representative" means a legal guardian, natural guardian, conservator, agent acting under a valid power of attorney, trustee, representative payee, custodian under a transfer to minors account or any other agent or fiduciary of the Beneficiary.
- 1.11. "Supplemental care" or "supplemental needs" shall mean care that is not provided, or needs that are not met, by any private assistance or government assistance that may be available to a Beneficiary.
- 1.12. "Remainderman" or "remaindermen" shall mean the person or persons designated by the Grantor to receive surplus assets of the Trust sub-account upon the Beneficiary's death.

ARTICLE 2 ESTABLISHMENT OF TRUST

- 2.1. Trust is Established. The Settlor and Trustee hereby establish a Trust for the benefit of Beneficiaries (as defined in Article I) under this Trust.
- 2.2. Initial Funding of Trust. Concurrently with the execution of this Trust, the Settlor and Trustee assigns, conveys, transfers, and delivers a lump sum payment of One Hundred Dollars and No Cents (\$100.00) to the Trust. The Trust estate shall consist of this initial contribution and any additional contributions in cash or property made to the Trust estate at any time by any Grantor in accordance with the provisions below in Article 4.
- 2.3. Irrevocability. This Trust shall be irrevocable.
- 2.4. Amendments to Trust. Notwithstanding the irrevocability of this Trust as set forth in paragraph 2.3 above, this Trust may be amended from time to time to comply with its purposes and intent as set forth in this document. The Trustee may also amend the Trust to continue to conform with any statutes, rules, or regulations that are approved by any governing body or agency.
- 2.5. Management of Trust. The Trustee, Guardian Trust Foundation, Inc., or its successor or successors, has the ultimate managerial control over the Trust. The Settlor shall determine the amount of the trust corpus to invest, maintains sole and exclusive authority to appoint and remove the Trustee or Co-Trustees and is responsible for all day-to-day decisions regarding the use of the funds for each Beneficiary. However, when conducting the business of the Trust, the Trustee, or any one of the acting Co-Trustees may act alone and independently.

ARTICLE 3 SPENDTHRIFT PROVISIONS

The Trust, and any Trust sub-accounts, shall not be subjected to creditors of any of the Beneficiaries. The Trust, or the assets held in any Trust sub-account for their benefit, shall not cause public and private assistance benefits of the Beneficiaries to be affected. The Trust, or any portion of the Trust, is

not a resource to any Beneficiary except in the complete discretion of the Trustee. No part of the principal of the Trust created herein should be used to supplant or replace public assistance benefits of any county, state, federal or other governmental agency which has a legal responsibility to serve persons who are incapacitated, disabled or institutionalized. This Trust is not a resource to the Beneficiary. It is not available to the Beneficiary except in the Trustee's discretion, and then only to the extent that other resources are not available to provide for the Beneficiary. Under no circumstance can the Beneficiary compel a distribution from the Trust for any purpose, nor can a Beneficiary transfer any interest they may have in this Trust nor can a creditor reach the assets of this Trust, either voluntarily or involuntarily. The Trustee's discretion in making non-support disbursements as provided for in this instrument is final as to all interested parties, even if the Trustee elects to make no disbursements at all. The Trustee's sole and independent judgment, rather than any other party's determination, is intended to be the criterion by which disbursements are made. No court or any other person shall substitute their judgment for the decisions made by the Trustee. The Settlor, Grantor and Trustee do not owe any obligation of support to any of the Beneficiaries.

No interest in the principal or income of the Trust shall be anticipated, assigned or encumbered, nor shall be subject to any creditor's claim or to legal process, of any Beneficiary. Furthermore, because this Trust is to be conserved and maintained for the Beneficiary throughout the Beneficiary's life, no part of the corpus thereof, neither principal nor undistributed income, shall be construed as part of the Beneficiary's "estate" or be subject to the claims of 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 Florida, or any other state, or the United States, or any other governmental agency.

ARTICLE 4

CONTRIBUTIONS TO THE TRUST BY A GRANTOR FOR A BENEFICIARY

- 4.1. Grantors' Intent to Establish a Supplemental Fund. In making contributions to the Trust, Grantors do not intend to displace any public and/or private financial assistance that may otherwise be available to any Beneficiary. Grantors intend to establish a supplemental fund and it is the Grantors' primary concern that this Trust continue in existence as a supplemental (and emergency) fund for the Beneficiary, throughout each Beneficiary's life.
- 4.2. Irrevocability of Joinder Agreements or Grantor's Gift, Bequest, or Devise. Subject to approval and acceptance by the Trustee, this Trust shall be effective as to a specified Beneficiary upon Grantor's execution of a joinder agreement and/or Grantor's contribution of property and/or money ("Property") to the Trust. Upon approval by the Trustee, and delivery of Property that is acceptable to the Trustee, the following provisions apply:
 - 4.2.1. the Trust shall be irrevocable as to such Grantor and specified Beneficiary;
 - 4.2.2. the contributed Property shall not be refundable to the Grantor under any circumstances; and,
 - 4.2.3. the designation of the Beneficiary and/or remaindermen may not be revoked or changed by the Grantor or Trustee.
- 4.3. Contributions to a Trust Sub-Account. The Trustee may not distribute to or for the benefit of a Beneficiary an amount greater than the total of all contributions to a Trust sub-account for a particular Beneficiary plus any undistributed income earned from said contributions.
- 4.4. Future Transfer of Property. At any time or from time to time, a Grantor may transfer, during his or her lifetime or at death, any kind of real or personal property to the Trust and the same shall be

subject to the terms of this Trust Agreement. The Trustee may refuse to accept any addition if the Trustee deems such rejection to be in the best interest of the Trust or a Beneficiary. Each Grantor retains no reversion or other interest in any Trust property.

- 4.5. Effect of Designation of Future Transfers of Property. In cases of future designations of property, as provided by paragraph 4.4 above, the Trustee will not consider such designations to be completed or effective, nor shall it credit any such property to a particular Beneficiary's Trust sub-account, until such property has been actually transferred and/or delivered to the Trust and accepted by the Trustee.

ARTICLE 5 DISTRIBUTIONS DURING THE BENEFICIARY'S LIFETIME

Subject to the Trustee's sole and absolute discretion, distributions from any of the individual Trust sub-accounts may be made as follows:

- 5.1. Distributions Within Discretion of Trustee. The Trustee may pay or apply for the supplemental care or supplemental needs of a Beneficiary, such amounts from the principal or income, or both, of the Trust sub-account maintained for such Beneficiary, up to the whole thereof, as the Trustee, in its sole and absolute discretion, may from time to time deem necessary, advisable or desirable. The Trustee may, in the Trustee's sole and absolute discretion, distribute any or all of the corpus of the Trust sub-account for the purposes stated herein, even if such distribution or distributions completely exhaust the corpus of the Trust sub-account, without regard to the potential expectancy of remaindermen. The interest and well-being of the Beneficiary is primary and shall be considered well above the interests of the remaindermen. The Trustee shall possess and exercise the authority to allocate all distributions between principal and income as it determines in its sole and absolute discretion. Any income not distributed from a Trust sub-account shall be added to the principal of that Trust sub-account.
- 5.2. Distributions Not to Replace Assistance. Distributions from this Trust should not be made to, or for the benefit of, a Beneficiary if the effect of such distribution would be to supplant, replace, or to disqualify a Beneficiary from receiving government assistance. The Trust principal and income is specifically not available to any Beneficiary except in the discretion of the Trustee. Generally, distributions should not be made by the Trustee to, or for the benefit of, a Beneficiary in excess of resource and income limitations of any public benefit program to which the Beneficiary is entitled. However, such distributions are not specifically prohibited and may be made with the full understanding of how such distributions may affect future benefits. The Trustee may, but is not required to, consider the future needs of a Beneficiary when making distributions or when considering requests for distributions. In the event the Trustee is requested to release principal or income of the Trust or Trust sub-account to or on behalf of the Beneficiary to pay for equipment, medication, or services which a public assistance program would otherwise 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 Trustee's discretion to take whatever administrative or judicial steps may be necessary to continue the Beneficiary's eligibility for public assistance, including obtaining instructions from a court of competent jurisdiction ruling that the Trust corpus and Trust sub-account is not available to the Beneficiary for public assistance eligibility purposes. Any expenses of the Trustee in this regard, including reasonable attorney's fees, shall be a proper charge to the Beneficiary's Trust sub-account.

- 5.3. Non-exclusive Examples of Appropriate Distributions. The following examples illustrate the types of non-support payments that are appropriate for the Trustee to make from a Beneficiary's Trust sub-account to, or for the benefit of, a Beneficiary. Such examples are not exclusive and include:
- 5.3.1. medical, dental, and diagnostic work and treatment for which there are no available private or public funds;
 - 5.3.2. medical procedures that are desirable in the Trustee's sole discretion, even though they may not be medically necessary or lifesaving;
 - 5.3.3. supplemental nursing care, rehabilitative and/or occupational therapy services;
 - 5.3.4. differentials in cost between housing and shelter for shared and private rooms in institutional settings;
 - 5.3.5. care appropriate for a Beneficiary that assistance programs may not or do not otherwise provide;
 - 5.3.6. expenditures for travel, companionship, and other expenditures that will improve the quality of a Beneficiary's physical, emotional, and/or psychological well-being;

**ARTICLE 6
DISTRIBUTION UPON A BENEFICIARY'S DEATH**

- 6.1. Upon the death of a Beneficiary, the non-profit Trustee shall retain the first \$500.00 (Five Hundred Dollars) of the amount remaining in that Beneficiary's trust sub-account as a remainder interest.
- 6.2. To the extent that family members have failed to provide for funeral and burial arrangements for the Beneficiary, in the sole discretion of the Trustee, the Trustee is authorized to distribute funds for reasonable funeral and burial arrangements prior to any further distribution.
- 6.3. Any assets remaining in a Beneficiary's sub-account after satisfaction of sub-sections 6.1. and 6.2. herein, shall be distributed by the Trustee in such proportions or amounts as identified in the Beneficiary's Joinder Agreement or, if none, under the residuary terms of such document by which the Grantor may have designated his or her gift, bequest, or devise for such Beneficiary.
- 6.4. If, within Ninety (90) days of the Trustees' notification of the death of the Beneficiary, the Trustee cannot, after diligent and reasonable inquiry, ascertain the location of any or all remaindermen of a Beneficiary's sub-account such that the Trustee, in his sole discretion, may make distribution to such remaindermen, or in the absence of sufficient direction by the Grantor as to the residual distribution of the balance of surplus Trust property not otherwise retained by the Trust in such document that established the gift, bequest, or devise for such Beneficiary, the entire sub-account balance shall be retained by the Trust, and distributed to the Trustee.

ARTICLE 7
NON-TERMINATION OF TRUST OR TRUST SUB-ACCOUNTS

- 7.1. Non-Termination. This Trust may not be terminated during the lifetime of the Beneficiary.
- 7.2. No Refunds to Grantor. No refunds may be made to a Grantor or Beneficiary.

ARTICLE 8
ADMINISTRATIVE PROVISIONS RELATING TO TRUST SUB-ACCOUNTS

- 8.1. Establishment and Maintenance of Trust Sub-accounts. A separate Trust sub-account shall be established and maintained for the sole benefit of each Beneficiary, but the Trustee may pool these sub-accounts for investment and management purposes. The Trustee, or the Trustee's authorized agents, will maintain records for each Trust sub-account in the name of, and showing the contributed property for, each Beneficiary.
- 8.2. Reports to the Beneficiaries. The Trustee will report at least annually to each Beneficiary or to such Beneficiary's legal representative. Such report will include a complete statement of the Trust sub-account assets and all of the transactions to or from such Trust sub-account occurring during the reporting period. The Grantor may appoint a designated representative to represent and bind a beneficiary and receive any notice, information, accounting or report on behalf of a beneficiary, as permitted in the Florida Trust Code.
- 8.3. Inspection of Trust Records by Beneficiary or Designated Representative. The Trust sub-account records maintained by the Trustee will be available and open at all reasonable times for inspection by the Beneficiary, the legal representative of the Beneficiary, or both, however; in the event that the Grantor has appointed a designated representative as per Article 8.2, above, the Trust sub-account records maintained by the Trustee will be available and open at all reasonable times for inspection by the designated representative only. The Trustee is not required to furnish Trust records, sub-account records, or documentation to any individual, corporation, or other entity who: a) is not a Beneficiary; b) is not the legal representative of a Beneficiary; or, c) does not have express written authorization of the Beneficiary to receive such information, unless required by law. The Trustee's decision shall be the sole and final determination as to the sufficiency of any and all written authorizations or requests for records and/or documentation.
- 8.4. Costs of Defending Trust. Costs and expenses of defending the Trust, or any Trust sub-account, including attorney's fees incurred prior to, during, or after trial, and on appeal, against any claim, demand, legal action, equitable action, suit, or proceeding may, in the sole discretion of the Trustee, be apportioned on a pro rata basis to all Trust sub-accounts; or charged only against the Trust sub-account that is affected by the action defended against.

ARTICLE 9
TRUSTEE PROVISIONS

- 9.1. Employment of Agents and Others. The Trustee may, in performing its duties under this Trust, seek the advice and assistance of any person or entity it deems to be appropriate, including, but not limited to, any federal, state, and/or local agencies that are established to assist people with

disabilities as well as private individuals, organizations or companies the Trustee deems helpful.

- 9.2. Designation of Co-Trustee. The Trustee may designate or remove a Co-Trustee, or Co-Trustees, as it may deem, in its sole and absolute discretion, to be necessary and advisable.
- 9.3. Trustee Relief from Identification of Programs. The Trustee shall not be liable to any Beneficiary for the failure to identify any programs or resources that may be available to such Beneficiary or to create programs when such programs do not exist. Furthermore, the Trustee and Co-Trustee are not responsible for qualifying any Beneficiary for any public assistance programs or for providing legal advice in obtaining such qualification.
- 9.4. Trustee's Powers. Except as may be otherwise provided in this Trust, and for so long as the Trustee is prudent (as provided in Florida Statutes § 518.11 and 518.112 and any subsequent amendments to said sections) in administering the Trust, the Trustee shall exercise all powers under any and all Federal and Florida laws that may exist and be applicable to trusts (such as under Florida Statute § 736 and any subsequent law), in effect on or after the execution of a Joinder Agreement and/or delivery of property to the Trustee by a Grantor. The Trustee shall not be bound by Florida Statute § 738 regarding the allocation among principal and income, any statutory limitations regarding a Trustee who is also a beneficiary or any statutory or common law requirements regarding productivity of trust property.
- 9.5. Trustee's Acceptance of Beneficiaries. All Beneficiaries should medically meet the definition of disability as that term is defined in 42 U.S.C. § 1382 c(a)(3), or be reasonably expected at some point to meet that definition, as determined in the sole discretion of the Trustee, but this shall not be a requirement.
- 9.6. Trustee to Receive Full Consideration for Trust Assets. No authority described in this Trust, or available to trustees pursuant to applicable law, shall be construed to enable the Trustee to purchase, exchange, or otherwise deal with or dispose of the assets of any Trust sub-account for less than adequate or full consideration in money or money's worth.
- 9.7. Trustee Entitled to Reasonable Compensation. The Trustee and any Co-Trustee(s), including their agents, shall be entitled to reasonable compensation and to reimbursement of costs and expenses properly incurred in the management and/or administration of the Trust. The Trustee and any Co-Trustee(s) shall be entitled to compensation to be determined from time to time by agreement in writing or by application of the schedule of fees as published by Trustee and in effect at the time such fees are charged for Trust sub-accounts of a similar size and character, and in the event that Trustee shall be called upon to render any extraordinary services, it shall be entitled to additional compensation therefor.
- 9.8. Trustee Resignation; Successor Trustees. The Trustee may resign upon written notice to the Beneficiaries and to the Co-Trustee(s), if the Trustee has named any Co-Trustee(s), at the time of the Trustee's resignation. Upon any such resignation, the Trustee shall designate a successor Trustee. A successor Trustee shall assume its duties under this Trust without any liability for the acts or omissions of any predecessor Trustee. The provisions of this paragraph shall also control if the Trustee ceases to exist, if dissolved, or can no longer serve as Trustee for any other reason. In conjunction with any action taken under this paragraph, a final accounting will be made by the Trustees to the Beneficiaries and to the Co-Trustee(s), if any.
- 9.9. Indemnification of Trustee. The Trustee and each Co-Trustee, their agents and employees,

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

ARTICLE 10 TRUSTEE PROVISIONS

- 10.1. Waiver of Bond. No Trustee acting under this Agreement shall be required to give any bond or security in any court or jurisdiction for acting hereunder. If bond is required by any law or court of competent jurisdiction, no surety shall be required on such bond, and such bond shall be an expense of the Trust.
- 10.2. Jurisdiction. This Trust shall be administered expeditiously consistent with its terms, free of any judicial intervention and without order, approval or other action by any court, subject only to the jurisdiction of a court which is invoked by the Trustee or other interested party or as otherwise provided by law.
- 10.3. Law to Govern. This Trust Agreement and the trusts created hereby shall be construed, regulated and governed by and in accordance with the laws of the State of Florida and of the United States of America.
- 10.4. Severability and Savings. The invalidity or unenforceability of any provision of this Agreement, or the application thereof to any person or circumstance, in any jurisdiction shall in no way impair, affect or prejudice the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of this Agreement, including that provision, or the application thereof to other persons and circumstances, in any other jurisdiction. Additionally, if any provision of this Trust disqualifies a Beneficiary for government assistance, the offending provision may be voided to avoid such disqualification.
- 10.5. Gender and Number. Whenever necessary or appropriate, the use herein of any gender shall be deemed to include the other genders and the use herein of either the singular or the plural shall be deemed to include the other.
- 10.6. Headings. The headings, titles and subtitles herein are inserted solely for convenient reference and shall be ignored in any construction hereof.

IN WITNESS THEREOF, the undersigned hereby subscribes to the above Declaration of Trust on the date and year first written above as Settlor and Trustee.

WITNESSES:

[Signature]

Ashley Gonnelli
Printed Name

[Signature]
Jennifer Ruiz
Printed Name

GUARDIAN TRUST FOUNDATION, INC.

By: [Signature]
Travis D. Finchum, Its President

STATE OF FLORIDA))
COUNTY OF PINELLAS))

The foregoing Declaration was acknowledged before me on April 19, 2019, by Travis D. Finchum, President of Guardian Trust Foundation, Inc., who is personally known to me or who produced _____ as identification.

[Signature]
Notary

