

## **GUARDIAN COMMUNITY TRUST FOR SPECIAL NEEDS**

### **FORMERLY KNOWN AS FAMILY TRUST FOR SUPPLEMENTAL NEEDS II**

This is the Second Amended and Fully Restated Family Trust for Supplemental Needs II ("SECOND AMENDED AND FULLY RESTATED MASTER TRUST"), an instrument created on March 23, 2004, and amended on November 24, 2004, by Family Trust of Massachusetts, Inc., then of Boston, Massachusetts 02109 ("FAMILY TRUST"), the purpose of such restatement being to document that the instrument has been renamed as shown above; to incorporate certain amendments to the original trust instrument; and to disclose that Guardian Community Trust, Inc., a Massachusetts non-profit corporation having a principal office located at One Elm Square, Suite 2D, Andover, Massachusetts ("GUARDIAN COMMUNITY TRUST") has succeeded FAMILY TRUST as Trustee hereunder; wherefore GUARDIAN COMMUNITY TRUST shall be the sole Trustee hereof, and it and its successors in trust shall hold any and all property that may be transferred to any of them as trustee for the sole benefit of the beneficiaries hereunder, in accordance with the powers and duties set forth in this Agreement. GUARDIAN COMMUNITY TRUST may be referred to hereinafter as the "Trustee."

#### ***Section 1. Establishment of the Trust***

1.01 Declaration of Trust. FAMILY TRUST does hereby irrevocably transfer into trust hereunder the sum of One Hundred Dollars (\$100.00), the receipt of which hereby is acknowledged, to have and to hold, together with any other property which the Trustee may, pursuant to any of the provisions hereof, at any time hereafter hold or acquire (all of which property hereinafter may be referred to collectively as the "Trust Estate"), for the uses and purposes, and upon the terms and conditions, set forth in this Agreement.

#### ***Section 2. Name and Purpose of the Trust***

2.01 Name of the Trust. This Trust shall be known as "the Guardian Community Trust for Supplemental Needs."

2.02 Trust Purpose. This Trust is established in order to provide for the collective management and distribution of the Trust Estate on behalf of persons who are disabled, as defined in 42 U.S.C. §1382c(a)(3), for whom trust accounts are established (hereinafter, the

"Designated Beneficiaries"). The Trust is intended to provide, in the sole and absolute discretion of the Trustee, supplemental services and benefits for the care, support, comfort, education and training of the Designated Beneficiaries, in addition to and over and above benefits they already receive, are entitled to receive or may receive in the future as a result of their present or future disability from any federal, state or local governmental or charitable program, agency or department.

2.03 Compliance with Federal and State Law. This Trust is established pursuant to, and is intended to comply with, the provisions of 42 U.S.C. §1396p(d)(4)(C), and rules and regulations promulgated thereunder, and shall be construed accordingly. The Trustee shall provide such notices to the Massachusetts Executive Office of Health and Human Services Office of Medicaid as are required by statute, regulation and published policy.

### ***Section 3. Trust Accounts***

3.01 Eligible Beneficiaries. An individual shall qualify to be a Designated Beneficiary if he or she is "disabled," as that term is defined in 42 U.S.C. §1382c(a)(3) and, to the extent not inconsistent with the foregoing federal statute, in 130 CMR 501.001 and 130 CMR 515.001, as such law and regulations may be amended or succeeded from time to time.

3.02 Establishment of Trust Accounts. An account for an eligible beneficiary (hereinafter, a "Trust Account") shall be established for the sole benefit of that individual by a parent, grandparent or legal guardian, by the individual himself or herself, or by a court. A person desiring to establish a Trust Account for an eligible beneficiary, or the eligible beneficiary himself or herself (hereinafter, the "Sponsor") shall execute an agreement adopting the terms of this Trust (hereinafter, the "Sponsor Agreement"). The Trust shall become effective with respect to such beneficiary upon execution of the Sponsor Agreement by the Sponsor and the Trustee, and the individual thereafter shall be considered a Designated Beneficiary for purposes of this Agreement; provided, however, that the Trustee may, in its discretion, decline to accept a Sponsor Agreement presented to it. Upon acceptance, a Trust Account shall be established for the Designated Beneficiary, and the Sponsor Agreement thereafter shall be held and administered in accordance with

the Agreement herein. By executing a Sponsor Agreement, a Sponsor agrees to be subject to all terms and conditions of the Agreement herein, including any amendments hereto.

3.03 [INTENTIONALLY OMITTED.]

3.04 Sponsor Agreements. Each Sponsor Agreement shall designate the beneficiary for whom a Trust Account is established. The Sponsor also shall agree that any amounts remaining in the Trust Account upon the death of the Designated Beneficiary are to be disposed of as set forth in Section 6 of this Agreement.

3.05 Funding.

(a) Additions to a Trust Account. The Sponsor, or any other person desiring to make a contribution to a Trust Account, shall have the right at any time to add property acceptable to the Trustee to a Trust Account on behalf of a Designated Beneficiary. Upon acceptance by the Trustee, any new property donated to this Trust to establish a Trust Account shall become part of the Trust Estate and shall be held for the benefit of the Designated Beneficiary as set forth herein. Such additions to a Trust Account may be made in any manner recognized under state law, such as, for example, by lifetime direct transfers, by naming the Trust as beneficiary under a trust agreement, at death by devise or bequest under a will, or by naming the Trust as owner and/or beneficiary under an insurance contract, annuity contract or retirement plan.

(b) Acceptance of Property by Trustees. The Trustee, in its absolute discretion, may decline to accept property which is offered for transfer or payment to a Trust Account, if the Trustee deems the property of a character which is inappropriate for addition to the Trust Estate. If the Trustee, in the exercise of such absolute discretion, decides not to accept the property, it shall advise the person making such transfer or the personal representative of his or her estate within thirty (30) days after being notified of the nature of the property to be transferred, and such person or estate shall terminate or negate such transfer. If the property already has been received or registered in the name of the Trust, the Trustee shall have the authority to cancel the transfer, or to return the property, and it promptly shall have the property re-registered and/or returned to the person or estate that made the transfer, with the costs of re-registration and/or return to be paid by such person

or estate, or out of the property itself, as the Trustee shall determine in its absolute discretion.

(c) Trust Account Designation by Transferor. Any person desiring to make a contribution to the Trust Estate shall designate the specific Trust Account to which the property is to be allocated. In the absence of a specific designation, if the transferor or his or her spouse already is a Sponsor for a Trust Account the property shall be deemed to be designated to that Trust Account. If the transferor or his or her spouse is not a Sponsor of a Trust Account, and if he or she does not designate any existing Trust Account, the Trustee, in its discretion, shall determine the Trust Account(s) to which the property shall be allocated, or it may, in its discretion, establish a new Trust Account(s) for an eligible beneficiary to which the property shall be allocated.

3.06 Minimum Funding. In order to make the administration of Trust Accounts consistent with the actual practice since the formation of this Trust on March 23, 2004, no minimum amount shall be required in order to establish or maintain a Trust Account hereunder, and no special determination or act of discretion shall be necessary in order to accept new accounts of *de minimis* value.

#### ***Section 4. Administration of Trust Accounts***

4.01 Administration for the Sole Benefit of Designated Beneficiary. Each Trust Account shall be held for the sole benefit of the Designated Beneficiary of that Trust Account during his or her lifetime, and the Trustees shall not use assets in a Trust Account during the Designated Beneficiary's lifetime for the benefit of any other trust beneficiaries, person or entity, or at any time for any purposes not set forth in this Agreement. Any persons or entities named in the Sponsor Agreement to receive property upon the death of the Designated Beneficiary shall have no present interest in the Trust Account until the death of the Designated Beneficiary, and the Trustee shall subordinate the interests of any such persons or entities to the interest of the Designated Beneficiary during his or her lifetime.

4.02 Resource Management Plan. The Trustee may, upon its own initiative or upon request by a Designated Beneficiary, family member or other legal representative of a

Designated Beneficiary, develop a specific plan for the use of funds of the beneficiary (hereinafter, the "Resource Management Plan"), in order to help ensure that the Trust Account is used appropriately for the Designated Beneficiary. The Trustee may, in its discretion, consult with the Designated Beneficiary, family members, guardians and conservators and public or private health care providers, and it may expend funds of the Trust, either as separate expenses of individual Trust Accounts or as an expenditure of the Trust Estate generally, to employ case managers, social workers, psychologists, nurses, physicians, attorneys and/or other professionals in order to develop Resource Management Plans. The Trustee may memorialize Resource Management Plans in any appropriate form, and it may review any such plan at reasonable intervals and modify it as is appropriate and in keeping with the Trustee's discretion under this paragraph.

4.03 Joint Management of Trust Accounts. The Trustee is authorized to pool the resources of all Trust Accounts, to commingle the property it holds under this Agreement and to invest such property in one or more pools of funds which may, in the sole discretion of the Trustee, be managed so as to reflect one or more Sponsors' specific investment concerns, the length of time that such funds are expected to last or other variables which the Trustee, in its sole discretion, determines may be relevant. Each Trust Account shall be credited with its proportionate share of the net income from each investment pool to which such funds are allocated for investment, and each Trust Account shall be debited for its proportionate share of any applicable investment losses and/or expenses generally attributable to administration of the Trust Estate. Each Trust Account shall be charged separately for disbursements and distributions made on behalf of its Designated Beneficiary, or which otherwise are attributable specifically to that Trust Account.

4.04 Segregation of Assets Contributed in Kind. The Trustee, in its absolute discretion, shall have the authority to allocate assets received hereunder in kind solely to the Trust Accounts for which the property has been contributed. In such cases, only the Trust Account(s) to which the property has been allocated shall be credited or charged with its (or their respective) share(s) of income, profits, gains and losses derived from such segregated property. The Trustee, in its sole discretion, shall have the right to charge the said Trust Account(s) for administrative services and expenses attributable to such

segregated property, in addition to the general administrative services and expenses chargeable to those accounts.

4.05 Accounting. Upon request by any Sponsor or Designated Beneficiary, the Trustee shall provide an accounting of the transactions of the Trust Account; provided, however, that the Trustee shall not be required to prepare more than one accounting for any 12-month period. In addition, with respect to Trust Account where the Designated Beneficiary either is or has been a recipient of Massachusetts Medicaid benefits ("MassHealth"), the Trustee shall send a copy of the accounting by regular mail to the Executive Office of Health and Human Services, Office of Medicaid, its successor agency or its designee, and, if applicable, to the Medicaid agency of any other state providing Medicaid benefits to the Designated Beneficiary. After the death of the Sponsor, except where the Sponsor is the Designated Beneficiary, the Trustee may designate another family member or other interested person to receive the accounting for the Trust Account. When the Designated Beneficiary is the Sponsor, upon his or her death the duly authorized representative of the Designated Beneficiary's estate shall have the right to accounting provided herein. At least as often as annually, the books and records of the Trust shall be audited by a certified public accounting firm. The assent to each accounting by the persons entitled to receive it shall be a complete discharge of the Trustee as to all matters included in it. Recipients shall be deemed to have assented to an accounting for which they do not file a written objection with the Trustee within ninety (90) days after receiving the accounting.

#### ***Section 5. Disposition During the Lifetime of the Designated Beneficiary***

5.01 Distributions on Behalf of a Designated Beneficiary. During the lifetime of the Designated Beneficiary, the Trustee shall use, apply or expend as much of the net income and principal of the Trust Account for the sole benefit of the Designated Beneficiary of the Trust Account as the Trustee, in its sole and uncontrolled discretion, shall deem advisable for the care, support, comfort, welfare, education or training of the Designated Beneficiary, to supplement and not to supplant the benefits that the Designated Beneficiary otherwise receives as a result of his or her disability or medical need from any federal, state or local government or charitable program, agency or department, any of which provide services or benefits to disabled or medically needy persons. Any net income not distributed shall be

added to the Trust Account of the Designated Beneficiary at the end of each fiscal year of the Trust. Without intending to limit the foregoing, but subject to the limitations on the exercise of discretionary authority set forth in this Agreement, the following is expressly included among the categories of permissible disbursements for the benefit of the Designated Beneficiaries:

(a) Payments for any service provided solely for the benefit of a Designated Beneficiary by GUARDIAN COMMUNITY TRUST, notwithstanding any conflict of interest that may exist by reason of the relationship between the Trustee and the vendor of such service or benefit.

(b) [INTENTIONALLY OMITTED.]

(c) Payment of any tax liability of the Designated Beneficiary attributable to any taxable income generated by income of the Trust Estate.

5.02 Limitations on Discretionary Authority. In keeping with the intent of this Trust Agreement, the Trustee shall not exercise any discretionary powers granted under this instrument in any manner which would prevent the Designated Beneficiary from qualifying for any federal, state or local governmental or charitable benefits or programs which he or she may be entitled to receive on account of his or her disability or medical condition. In addition, no income or principal of a Trust Account shall be paid or expended for the benefit of a Designated Beneficiary so long as there is sufficient support available to the Designated Beneficiary to provide for his or her medical care, maintenance, comfort, welfare, education and training from federal, state and local governmental or charitable programs, agencies and departments, unless the Trustee determines, based solely upon its own judgment, that it is in the best interest of the Designated Beneficiary to use resources of the Trust Account without regard for such other resources, and absent such a free and unconstrained judgment, the Trustee shall have no discretion to distribute property which would cause the Designated Beneficiary to fail to qualify for benefits under any federal, state or local governmental or charitable program, agency or department. The Trustee, in exercising or declining to exercise its discretionary power to distribute property in a Trust Account, shall consider any and all resources of any kind, including government or

charitable benefits and entitlements, owned by or available to the Designated Beneficiary of that account.

5.03 Binding Effect of Trustee Determinations. The determination of the Trustee with respect to the necessity for and the amounts of any payments to or for the benefit of any Designated Beneficiary shall be conclusive on all persons in any manner interested in any Trust Account created pursuant to this Agreement, and the exercise or non-exercise of any discretionary power granted hereunder to the Trustee, including without limitation all actions it may take or not take with respect to making distributions pursuant to the terms of this Agreement regarding discretion of the Trustee, shall be final and binding upon all persons. Property of this Trust shall not be subject to any court-directed invasion pursuant to the provisions of any statute of the Commonwealth of Massachusetts, any other state or the United States of America.

5.04 [INTENTIONALLY OMITTED.]

#### ***Section 6. Disposition Upon Designated Beneficiary's Death***

6.01 Payment of Expenses. Upon the death of the Designated Beneficiary, the following types of administrative expenses may be paid from the trust prior to reimbursement to the states(s) for medical assistance paid on behalf of the Designated Beneficiary under its Medicaid program(s) :

- Taxes due from the trust to the State(s) or Federal government because of the death of the Designated Beneficiary;
- Reasonable fees for administration of the trust estate such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust.

Upon the death of the Designated Beneficiary, the following expenses and payments are examples of some of the expenditures not permitted prior to reimbursement to the state(s) for medical assistance paid on behalf of the Designated Beneficiary under its Medicaid program(s):



- Taxes due from the estate of the beneficiary other than those arising from inclusion of the trust in the estate;
- Inheritance taxes due for residual beneficiaries;
- Payment of debts owed to third parties;
- Funeral expenses; and
- Payments to residual beneficiaries.

For purposes of describing prohibited payments, the Trustee of this pooled trust is not considered a residual beneficiary.

6.02 Division of Remainder. If any funds remain in the Trust Account after paragraph 6.01 has been applied, the Trustee shall divide the remaining funds into two shares, one to be identified as the "Trust Share," and the other to be identified as the "Testamentary Share," and the amounts of such shares shall be determined in the following manner:

(a) For Trust Accounts established prior to the date of this Second AMENDED AND FULLY RESTATED MASTER TRUST, the Trust Share shall be equal to One Thousand Dollars, (\$1,000.00), plus the following percentages of the balance remaining after deducting the foregoing amount; provided that the said percentages shall apply during the periods specified below, determined with reference to the date of execution of the Sponsor Agreement and Assignment to Trust instrument creating the account (referred to hereinafter as the "Date of Assignment"):

(i) If the Beneficiary dies within one (1) year from the Date of Assignment, the Trust Share shall be Five Percent (5%) of the remaining principal and undistributed income of the account;

(ii) If the Beneficiary dies more than one (1) year but less than two (2) years from the Date of Assignment, the Trust Share shall be Ten Percent (10%) of the remaining principal and undistributed income of the account;

(iii) If the Beneficiary dies more than two (2) years but less than three (3) years from the Date of Assignment, the Trust Share shall be Fifteen Percent (15%) of the remaining principal and undistributed income of the account; and

(iv) If the Beneficiary dies more than three (3) years from the Date of Assignment, the Trust Share shall be Twenty Percent (20%) of the remaining principal and undistributed income of the account.

(b) For Trust Accounts established on or after the date of this SECOND AMENDED AND FULLY RESTATED MASTER TRUST, the Trust Share shall be equal to One Thousand Dollars (\$1000.00), plus a percentage of the balance remaining after deducting the foregoing amount; provided that the said percentages shall apply during the periods specified below, determined with reference to the date of execution of the Sponsor Agreement and Assignment to Trust instrument creating the account (referred to hereinafter as the "Date of Assignment"):

(i) If the Beneficiary dies within one (1) year from the Date of Assignment, the Trust Share shall be Five Percent (5%) of the remaining principal and undistributed income of the account;

(ii) If the Beneficiary dies more than one (1) year but less than two (2) years from the Date of Assignment, the Trust Share shall be Ten Percent (10%) of the remaining principal and undistributed income of the account;

(iii) If the Beneficiary dies more than two (2) years from the Date of Assignment, the Trust Share shall be Fifteen Percent (15%) of the remaining principal and undistributed income of the account.

(c) The amount of the Testamentary Share shall be equal to the entire amount of funds remaining in the account after the application of the foregoing paragraph 6.01, minus the amount retained by the trust as the Trust Share, determined in accordance with the foregoing subparagraph 6.02(a) or 6.02(b), whichever applies. If said sum is zero or less, no Testamentary Share shall be established.

6.03 Funds to Remain in Trust. The Trust shall retain the Trust Share, plus any portion of the Testamentary Share that is not distributable under the following paragraphs 6.04 and/or 6.05, and all such funds shall be held or distributed by the Trustee solely for the benefit of other individuals who are disabled. In the absence of reallocation within the Trust, twelve months after the death of the Designated Beneficiary such funds may be distributed free of trust hereunder solely to benefit individuals who are disabled within the meaning of this Agreement, which may include a distribution to GUARDIAN COMMUNITY TRUST, INC. so long as the purpose of GUARDIAN COMMUNITY TRUST, INC. remains solely to benefit persons who are disabled within the meaning of this Agreement.

6.04 Reimbursement of Medicaid. If a Testamentary Share is established under the foregoing paragraph 6.03, the Trustee shall, within thirty (30) days after receiving notice of the death of the Designated Beneficiary, notify by certified mail, return receipt requested, the state agency which administers the Medical Assistance Program in each state from which the Trustee believes the Designated Beneficiary received Medical Assistance during his or her lifetime, informing such agency or agencies that the person has died and, if known, the date of death. Such notice shall request that the state, if it wishes to file a claim for reimbursement of Medical Assistance, do so pursuant to Mass. General Laws c. 118E, Section 32, or such other applicable provision of law governing claims against the estate of the Designated Beneficiary. In Massachusetts, said notice shall be mailed to the Estate Recovery Unit of the MassHealth Agency, Executive Office of Health and Human Services, Office of Medicaid, or its successor unit, department or agency. The Trustee shall, to the extent of the total amount of the Testamentary Share and any income thereof, pay MassHealth and any other state Medicaid agency an amount equal to the total amount of medical assistance paid on behalf of the Designated Beneficiary under such state's Medical Assistance program, and if the amount of the Testamentary Share, together with the income thereof, is not sufficient to satisfy all such claims, the Trustee shall partially reimburse each state which has filed a valid claim by distributing the total amount of the Testamentary Share, together with the income thereof, among all such states, to each in proportion to its share of the total amount of Medical Assistance paid by all states filing timely valid claims. After all of the distributions required under the foregoing provisions have been made, the Trustee shall distribute any remaining property of the Testamentary Share as provided in the following paragraph 6.05.

6.05 Election to Distribute Amounts to Others. If the Sponsor Agreement names donees of the Testamentary Share, any portion of the Testamentary Share that remains after Medicaid claims have been satisfied (as provided in the foregoing paragraph 6.04) shall be distributed as directed in the Sponsor Agreement, and if funds are insufficient to satisfy all bequests thereunder, the property shall be distributed ratably among all said donees. In the event of a failure or lapse or any gift under the Sponsor Agreement, any such undesignated funds shall be distributed to the probate estate of the Designated Beneficiary.

### ***Section 7. Trustees and Appointment of Successors***

7.01 Appointment of Successor Trustees. In the event that the Trustee resigns, is removed or is unable for any reason to act or to continue to act as trustee of this Trust, or in the event that an additional Trustee is needed at any time, the Board of Directors or other governing body of the said GUARDIAN COMMUNITY TRUST shall appoint a new Trustee (even if GUARDIAN COMMUNITY TRUST is the resigning Trustee) within sixty (60) days of being notified of the need therefor, acting under whatever voting requirements are typical for decisions of the corporation which concern financial liabilities comparable to the property then held in trust hereunder. Such appointment shall become effective immediately upon the action of the Board of Directors of GUARDIAN COMMUNITY TRUST, without obtaining approval from any court having jurisdiction over the Trust. If GUARDIAN COMMUNITY TRUST is unable for any reason to discharge the foregoing responsibility in a timely manner, a court of competent jurisdiction shall do so.

7.02 Non-Profit Trustee. The Trustee at all times shall be a not-for-profit corporation, trust, partnership, foundation or other entity which satisfies the criteria for being a "nonprofit association," as that term is used in 42 U.S.C. §1396p(d)(4)(C)(i), as that statute from time to time may be amended or succeeded.

7.03 Removal of Trustee. Any Trustee serving hereunder can be removed by vote of two thirds (2/3) of the Board of Directors, or other governing body, of GUARDIAN COMMUNITY TRUST, or in default of any action to decide a question of removal, by a court of competent jurisdiction upon request by a Sponsor or Designated Beneficiary; provided, that a written decision by any such governing body not to remove a Trustee shall not

represent a "default" for purposes of vesting the right to remove a Trustee in any other entity. In the event that a Trustee is removed, a successor shall be appointed under paragraph 7.01 of this Agreement.

7.04 Additional Trustees. One or more additional Trustees may be appointed, in the sole discretion of GUARDIAN COMMUNITY TRUST. The determination of the need for an additional trustee shall be made by the Board of Directors or other governing body of GUARDIAN COMMUNITY TRUST, acting under whatever voting requirements are typical for decisions of the corporation which concern financial liabilities comparable to the property then held in trust hereunder. If such need is found to exist, the procedure for appointing a successor Trustee under paragraph 7.01 shall be used to appoint the additional Trustee.

7.05 Account of Former Trustee. Within thirty (30) days of resignation, substitution or removal of a Trustee, the former Trustee shall render a final accounting to all persons then entitled to an accounting under paragraph 4.05. If all persons to whom an account is rendered approve in writing to any such account, or having received any such account and having made no objection in writing within sixty (60) days of the receipt of such account, such approval or absence of objection shall be conclusive evidence that such account was in accordance with the terms of the Agreement, and such account shall be final and binding upon all persons interested in this Trust.

7.06 Resignation of a Trustee. A Trustee may resign by a vote of its Board of Directors or other governing body, acting under whatever voting requirements are typical for decisions of the corporation which concern financial liabilities comparable to the property then held in trust hereunder. Such resignation shall become effective upon execution of a written notice of resignation by a duly authorized director or officer of the Trustee, or upon ratification of such notice, but otherwise upon whatever terms are set forth in the notice of resignation, all without any requirement of approval from any court having jurisdiction over the Trust; provided, however, that no Trustee shall resign without having first appointed a successor, or otherwise ensured the continued good-faith performance of the fiduciary duties owed to the beneficiaries of the Trust Accounts; and provided, further, that upon resignation of the Trustee, the successor Trustee shall issue notice of such action in the form and manner that is set forth in Section 11.02 of this SECOND AMENDED AND FULLY RESTATED MASTER TRUST with respect to an amendment of this instrument.

## ***Section 8. Liabilities and Protection of Trustees and Third Parties***

8.01 Indemnification. No Trustee shall be liable for any act or omission in the administration of the trust created by this instrument or for the loss or damage to any property, except for a Trustee's own actual fraud or gross negligence; nor shall the Trustee or any employee of the Trustee be personally liable for the acts or omissions of any other Trustee or employee of the Trustee, or for the acts or omissions of any officer, agent or servant elected or appointed by or acting for a Trustee. Upon the termination of a Trustee's service hereunder, the Trustee shall be automatically released from any liability attributable to its services as trustee hereunder, except for the Trustee's own actual fraud or gross negligence.

8.02 Reliance Upon Representations by Others. The Trustee shall be fully protected in acting upon any instrument, certificate, paper or presentation believed by it to be genuine and to be signed or presented by the proper person or persons, and the Trustee shall be under no duty to make any investigation or inquiry as to any statement contained in such writing or representation, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

8.03 Reliance of Third-Parties Upon Representations by Trustee. All persons dealing with the Trustee are released from inquiry into the decision or authority of any Trustee and from seeing to the application of any monies, securities or other properties paid or delivered to the Trustee or any agent acting on its behalf. The original of each resignation, removal or appointment of a Trustee and each acceptance of appointment shall be kept attached to the original of this Trust instrument, which shall be held by the Trustee. Anyone may rely on a copy of this Trust instrument or of any writings attached hereto certified by a notary public as fully as on the original documents. A written statement of any Trustee as to any facts relative to the Trust may always be relied upon and shall always be conclusive evidence in favor of any transfer agent and any other person dealing in good faith with the Trustee in reliance upon such statements.

8.04 Waiver of Conflict of Interest. The Trustee has potential conflicts of interest and may engage in self-dealing in the administration of this Trust, as described in the following subparagraphs. The Sponsors executing Sponsor Agreements to this Trust are

aware of these circumstances, and each of them by signing the Sponsor Agreement waives any and all claims against the Trustee on account of self-dealing, conflict of interest or any other act stated or implied in this paragraph or the following subparagraphs which might be construed as a breach of fiduciary duty on account of the relationship between the Trustee and a vendor of goods or services. Accordingly, the Trustee expressly is authorized to make or not make disbursements, and otherwise to exercise its sole discretion as Trustee, subject to the limitations on its authority as set forth in this Agreement, notwithstanding any potential conflicts of interest or potential or actual self-dealing, and the Trustee shall not be liable to the Sponsor or to any party for any act of self-dealing or conflict of interest resulting from its affiliations with GUARDIAN COMMUNITY TRUST or with any beneficiary or constituent agency thereof.

(a) The Trustee is affiliated with GUARDIAN COMMUNITY TRUST and, in making distributions from the Trust Accounts in accordance with the provisions of this Trust Agreement, it is contemplated that the Trustee may make disbursements directly to GUARDIAN COMMUNITY TRUST or to its affiliated programs and agencies, in their individual capacities and not as Trustee hereunder, on behalf of one or more beneficiaries of this Trust to cover the costs of services and benefits provided to such persons by GUARDIAN COMMUNITY TRUST or its affiliated programs and agencies.

(b) In making distributions from the Trust Accounts in accordance with the provisions of this Trust Agreement, it is contemplated that the Trustee may make disbursements to its own employees, or to programs and agencies affiliated with the Trustee, on behalf of one or more beneficiaries of this Trust to cover the costs of services and benefits provided to such persons by the Trustee or its affiliated programs and agencies.

(c) The Trustee is a potential beneficiary of amounts subject to its management in the Trust Accounts, to the extent that it is entitled to at least half of the funds remaining in each Trust Account upon the death of the Designated Beneficiary, and in making distributions from the Trust Accounts in accordance with the provisions of this Trust Agreement, the Trustee could stand to benefit from a decision not to expend funds in a Trust Account, to the extent that such a decision would cause funds to remain in the account upon the death of the Designated Beneficiary.

## ***Section 9. Delegation of Powers***

9.01 Delegation of Authority Among Trustees. Except as otherwise expressly provided in this Trust Agreement, if there is more than one Trustee, each shall have the authority to delegate to the other all duties required of them, or powers or discretion granted to them, under this Trust Agreement, including, but not limited to, disbursement of funds on behalf of a Designated Beneficiary, selection of investments for the Trust Estate and performance of other administrative duties. Such delegation shall become effective immediately upon certification in writing by the granting Trustee.

9.02 Delegation of Authority to Agents of the Trustee.

(a) Authority to Hire Corporate Custodian. The Trustee shall have the authority, but not the obligation, to hire a corporation to serve as a custodian for the Trust over trust securities and assets. The duties of such custodian may include the safekeeping of securities and other Trust assets, maintenance of Trust records, payment of disbursements and distributions from the Trust.

(b) Authority to Hire Investment Counsel and to Delegate Investment Authority. The Trustee shall have the authority, if in its discretion it deems it advisable, to hire an investment advisor or investment counsel on behalf of the Trust, specifically including the right to delegate investment authority to such adviser who shall be authorized to make investments on behalf of the Trust..

(c) Payment for Services. The Trustee is authorized to pay the compensation of agents, accountants, custodians, legal and investment counsel, which expenses, together with all other expenses attributable to administration of the Trust Estate, including reasonable administrative fees charged by the Trustee, shall be charged generally against the Trust Estate. Such expenses shall be allocated to the Trust Accounts in proportion to their relative values or in any other manner deemed appropriate by the Trustee.

## ***Section 10. Administration of Interests for Incapacitated Persons***

10.01 Interests of Persons Incapable of Managing Their Own Affairs. If, upon the death of a Designated Beneficiary, any money or property becomes distributable under this



instrument to a person who then is under the age of eighteen (18) years, or who, as a result of any physical or mental incapacity, is then incapable of managing his or her own affairs, or who is incapable of substantial gainful activity (as that term is used in Title XIV of the United States Code), the Trustee may administer such property in any one or more of the following ways: The Trustee may (a) distribute the property directly to the person, to the person's legally appointed guardian, to a parent of the beneficiary, to a custodian of a minor under the Massachusetts Uniform Transfers to Minors Act or a similar act of another jurisdiction, or by applying such amount directly for the benefit of the person; and the receipt of a person to whom such money or property is paid shall be a full and complete discharge to the Trustee of its fiduciary duty hereunder; or (b) convey the property into continuing trust under the terms of this instrument, retaining legal title and paying to or on behalf of such person so much, and only so much, of the trust income and principal as the Trustee in its sole discretion determines is required to meet the person's needs for health, education, support and well-being, taking into account the person's income, resources and entitlements from other sources, until the incapacity ends (or, in the case of a minor, he or she attains the age of eighteen (18)), or his or her disability ends, or the person dies, whereupon the Trustee shall distribute the remainder, outright and free of all trust, to the person if he or she is then living, or to the person's estate if he or she is deceased.

#### ***Section 11. Irrevocability of Gifts; Amendment of Trust***

11.01 Irrevocable Gift. A Sponsor or other contributor to the Trust shall not be permitted to revoke a Sponsor Agreement or withdraw any funds contributed to the Trust Estate under such Agreement; provided, however, that a Sponsor or his or her personal representative, during the lifetime of the Designated Beneficiary, may amend the Sponsor Agreement by filing a revocation or modification in writing with the Trustees to nullify or change any or all provisions in the Sponsor Agreement which designate persons or entities to receive amounts remaining in the Trust Account upon the death of the Designated Beneficiary.

11.02 Amendment of Trust. The terms of the Trust Agreement may be amended by a vote of seventy-five percent (75%) of the Board of Trustees, or other governing body, of GUARDIAN COMMUNITY TRUST. If GUARDIAN COMMUNITY TRUST is unable for any reason to discharge the foregoing responsibility in a timely manner, a court of competent

jurisdiction may do so. An amendment or modification of this trust shall become effective, without action or approval of any court having jurisdiction over the Trust, upon the later of (a) the date approved by the requisite number of Board Members, or (b) the thirty-first (31st) day after the Trustee has issued notice by certified mail to each beneficiary and to the state agency responsible for administering the Medical Assistance Program in Massachusetts. Notwithstanding the foregoing, the Trustees shall have no power to alter or amend the identity of any existing Designated Beneficiary, or to alter the interests of any Designated Beneficiary in the Trust as set forth in this Trust Agreement and the Sponsor Agreements; the Trustee further shall have no power to make any amendment that will adversely affect the exempt status of these funds under Federal and State law tax and/or Medicaid rules.

### ***Section 12. Trustee Powers***

12.01 General Statement. Subject to any limitations expressly set forth in this Agreement and the faithful performance of its fiduciary obligations, the Trustee shall have the power to do all such acts, take all such proceedings, and exercise all such rights and privileges as could be done, taken or exercised by an absolute owner of the trust property, without resort to, or order or license of, any court.

12.02 Specific Powers. Without limiting the scope of the foregoing grant of general powers over the Trust Estate, the Trustee may exercise the following specific powers:

(a) The Trustee is authorized to retain in the Trust for such time as it may deem advisable any property received from a Sponsor or other contributor, whether as a lifetime gift or as a donation upon the death of a Designated Beneficiary, and whether or not such property is of the character permitted by law for the investment of trust funds.

(b) The Trustee is authorized to manage and invest the Trust Estate as a single pool of funds or as separate accounts, as determined in the Trustee's sole discretion to be most consistent with fulfilling the purpose of this Trust and the instructions of any particular Sponsor Agreement.

(c) In addition to the foregoing powers, the Trustee shall, with respect to any and all property which may at any time be held in trust pursuant to this Agreement, whether such property constitutes principal or accumulated income of any Trust Account provided

for in this Agreement, have power, exercisable at its discretion at any time and from time to time on such terms and in such manner as it may deem advisable, to:

(1) Sell, convey, exchange, convert, improve, repair, manage, operate and control.

(2) Lease for terms within or beyond the term of any Trust Account provided for in this Agreement and for any purpose, and enter into any covenants and agreements relating to the property so leased or any improvements which may then or thereafter be erected on such property; provided, however, that no lease of property shall extend beyond the term of any Trust Account unless such lease is necessary to make such property productive.

(3) At the expense of the Trust Accounts provided for in this Agreement, carry insurance of such kinds and in such amounts as the Trustee may deem advisable.

(4) At the expense of any Trust Account provided for in this Agreement, commence or defend such litigation with respect to any such Trust Account or any property of the Trust Estate as they may deem advisable.

(5) Invest and reinvest the trust funds in such property as the Trustee may deem advisable, whether or not of the character permitted by law for the investment of trust funds, specifically including, but not by way of limitation, interests in any common trust fund or funds now or hereafter established and administered by a custodian hired by the Trustee solely for the investment of trusts funds.

(6) Lend money to any beneficiary who at the time of the loan is entitled or eligible to receive distributions of income or principal from the trust, on such terms and at such rate of interest (or without interest) as the Trustee shall deem appropriate.

(7) Vote and give proxies to vote any securities having voting rights held by the Trustee in trust pursuant to this Agreement.

(8) Pay any assessments or other charges levied on any stock or other security held by the Trustee in trust pursuant to this Agreement.

(9) Exercise any subscription, conversion, or other rights or options which may at any time attach, belong, or be given to the holders of any stocks, bonds, securities, or other instruments held hereunder.

(10) Participate in any plans or proceedings for the foreclosure, reorganization, consolidation, merger, or liquidation of any corporation or organization that has issued securities held by the Trustee in trust pursuant to this Agreement, and incident to such participation to deposit securities with and transfer title of securities to any protective or other committee established to further or defeat any such plan or proceeding.

(11) Enforce any mortgage or pledge held by the Trustee in trust pursuant to the Agreement at any sale under any such mortgage, or pledge to bid and purchase at the expense of any trust provided for in this Agreement any property subject to such security instrument.

(12) Make distributions in cash or in kind (including non-pro rata distributions of undivided interests in property), at such reasonable values as the Trustee shall determine and without the necessity of equalizing the cost basis of assets distributed to each beneficiary.

(13) Maintain such reserves as the Trustee shall deem proper for expenses, taxes, depreciation, and other liabilities of the Trust.

(14) Abandon any property which the Trustee deems worthless.

(d) The Trustee shall have power to borrow money from any person, firm, or corporation for any Trust purpose, on such terms and conditions as the Trustee may deem proper, to obligate the Trust to repay such borrowed money, and to secure repayment by mortgage, pledge or otherwise.

(e) The Trustee is authorized to compromise, submit to arbitration, release with or without consideration, and otherwise adjust any claim in favor of or against any trust provided for in this Agreement.

(f) The Trustees may hold securities or other property subject to this Agreement in its name as Trustee under this Agreement, in its own name without a designation showing it to be Trustee under this Agreement, or in the name of its nominee or the nominee of its agent, broker or custodian. The Trustee may hold or authorize its agent or custodian to hold such property unregistered in such condition that ownership will pass by delivery.

(g) Except as otherwise specifically provided in this Agreement, the Trustee shall have full power and authority to determine, in its discretion and in accordance with generally accepted accounting principles, what shall constitute principal of the Trust Estate or any Trust Account, gross income from the Trust Estate or any Trust Account, and net income of the Trust Estate or any Trust Account distributable under the terms of this Agreement. The determination of the Trustee as to what constitutes principal, gross income, or net income of the Trust Estate or of any Trust Account shall be conclusive and binding on all persons in any manner interested in any Trust Account created or to be created pursuant to this Agreement.

(h) All property taxes, assessments, fees, charges, and other expenses incurred by the Trustee in the administration or protection of the trusts created by this Agreement, unless directly attributable to a specific Trust Account, shall be a general charge on the Trust Estate and shall be paid by the Trustee prior to allocation of net income to any of the Trust Accounts or out of the principal and partially out of the income in such manner and proportions as the Trustee may deem to be advisable.

(i) The Trustee may, in its sole discretion, treat as a distribution hereunder any property which remains in trust upon the death of a Designated Beneficiary and which subsequently is reassigned to a new Trust Account.

### ***Section 13. Miscellaneous Provisions***

13.01 Inalienability of Interests. The interest of any beneficiary (including, without limitation, Designated Beneficiaries and all holders of remainder interests) either as to income or principal, shall not be anticipated, alienated or in any other manner assigned or pledged or promised by such beneficiary, and shall not be reached by, or be subject to, any legal, equitable or other process, including any bankruptcy proceeding, or be subject to the interference or control of creditors or others in any way or manner.

13.02 Powers of Successor Trustees. Any successor Trustee or additional Trustee appointed as provided in this Agreement shall, on such appointment, immediately succeed to all title of the prior Trustee and to all powers, rights, discretion, obligations, and immunities of a Trustee under this Agreement with the same effect as though such successor or additional Trustee were originally named as Trustee in this Agreement.

13.03 Titles and Headings. The section titles and paragraph captions set forth herein are not a part of this Agreement and shall not be deemed to affect the meaning or construction of any of its provisions.

13.04 Perpetuities Savings Clause. The interest of each beneficiary in an Individual Trust Account shall terminate ninety (90) years from the date such property last vested in any individual or non-trust entity, and upon termination such interest shall be distributed free of trust to the beneficiary in the amount of all principal remaining in the Individual Trust Account and net income attributable to that portion of the Trust property. Solely for purposes of this clause, funds of a deceased beneficiary that are added to another Individual Trust Account shall be deemed to have vested with GUARDIAN COMMUNITY TRUST at the time such funds were released to the Trust under paragraph 7.01 of this instrument.

13.05 Gender and Number. When context permits, a word or phrase used in the singular includes the plural and vice versa, and when used in any gender also includes all genders.

13.06 Bond. No bond shall be required of GUARDIAN COMMUNITY TRUST or of any successor or additional Trustee, but if a bond is required by law, no surety shall be required on such bond. The Trustee may in its discretion purchase liability insurance

covering claims arising from their services as Trustee hereunder. The premiums for any such bond or coverage shall be charged as a general expense of the Trust Estate.

13.07 Invalidity of Any Provision. Should any provision of this Agreement be or become invalid or unenforceable, the remaining provisions of this Agreement shall be and continue to be fully effective.

#### **Section 14. Situs and Governing Law**

14.01 Situs. The Trust created by this Agreement has been accepted by the Trustee in the Commonwealth of Massachusetts and will be initially administered by the Trustees in the said Commonwealth. The situs of this trust for administrative and accounting purposes shall be in Essex County.

14.02 Governing Law. The validity and construction of this Agreement, and the determination of all rights hereunder, shall be interpreted and governed by the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the undersigned FAMILY TRUST OF MASSACHUSETTS has hereunto set its duly authorized seal as Settlor and Trustee

FAMILY TRUST OF MASSACHUSETTS, INC.

By:   
Jane A. Murray, its President

#### **COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this 20<sup>th</sup> day of February, 2014, before me, the undersigned notary public, personally appeared Jane A. Murray, as President aforesaid, who proved to me through satisfactory evidence of identification, which was *personal knowledge*, that she is the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose in said capacity,

  
Notary Public,  
My Commission Expires:

