

[MODEL TLC TRUST FOR COURT REVIEW/APPROVAL]

IRREVOCABLE SPECIAL NEEDS TRUST

Declaration of Trust

This Trust is established for beneficiary **JANET DEPCILD** (hereinafter “**Janet D.**”) pursuant to court order and to be deposited with the court. The funds for the Trust consist of an initial grant of \$_____ **obtained from Mental Health Services Act Fund allocation**, plus such other sums as may be obtained from:

(A) donations from relatives or the public;

(B) SSI or OASDI funds collected pursuant to the federal Social Security Act for the care or benefit of **Janet D.**;

(C) Social Security Act Title IV-E matching funds for which **Janet D.** may be eligible under applicable law; and/or

(D) such other funds as may be available for deposit.

A copy of this Special Needs Trust was reviewed and approved by the **Ames County** Superior Court, Case No. _____ **on** _____, **20**__.

This Trust is created by the Court and is subject to its continuing jurisdiction, including the review of its expenditures, orders governing its management, and the appointment, qualification and compensation of trustee pursuant to California Probate Code Section 1517(b). It shall constitute a continuing “supervised setting” in which **Janet D.** is “living independently,” in accordance with applicable U.S. Department of Health and Human Services regulations and consistent with the provisions of 42 USC Section 672, as amended by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008.

ARTICLE ONE

1.01 Intent. The intent of this Trust is to provide a discretionary spendthrift Trust to supplement public benefits when such benefits may be unavailable or not sufficient to provide for the special needs of **Janet D.** As used in this Trust, “special needs” means the requisites for maintaining **Janet D.’s** health, safety and welfare, when in the discretion of the Trustee and consistent with this trust and its plan, as amended from time to time. It is the intent of this Trust to assist her (a) complete secondary education or a program leading to an equivalent credential, (b) enroll in an institution which provides post-secondary or vocational education, (c) participate in activity to promote employment, (d) facilitate employment to at least 80 hours per month, or (e) ameliorate a medical condition that inhibits accomplishment of (a) -(d) above, consistent with 42 U.S.C. 675, as amended by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. Funds committed to this trust for expenditure prior to **Janet D.** reaching 21 years of age shall fully apply to a match under the provisions of the above federal Act from Social Security IV-E or other funds.

1.02 Irrevocability. This Trust is irrevocable and may not be altered, amended, revised or modified except by court order. This Trust may be terminated only as provided in Article Four or by court order.

ARTICLE TWO

2.01 Trust Estate. The Trust Estate consists of funds deposited with the court or made available for court disposition, consistent with the Trust Declaration *supra*.

2.02 Trust Purpose. **Janet D.** was born on _____, _____ and is currently a dependent of _____ County. **Janet D.** resides in a **foster home** and her health care is

provided by Medi-Cal. She will be eligible for traditional “in care” services by licensed foster care providers until age 19 if enrolled in school; until 18 if not in school. When no longer eligible for benefits as a dependent child, she will have to find employment, arrange and pay for housing, transportation, health care, counseling and groceries without the help and support of parents or other family members.

Janet D. may have an option to “remain in care” without recognition of her legal status as an adult upon reaching 18 years of age. This Trust is intended to assist **Janet D.** whether she makes such an election, or whether she does not. If she makes such an election and for this or another reason does not require assistance from the Trust for its enumerated purposes until age 21 or until she is no longer “in care” as a non-adult “dependent”, then this trust shall be stayed until such time as that child dependency status (and the public support it entails) ceases pursuant to California Welfare & Institutions Code Section 391, or otherwise. It will, at that time, be reactivated to achieve its stated goals and to cease only when its resources are exhausted or **Janet D.** reaches 29 years of age, whichever occurs first.

Janet D. is a child subject to Welfare and Institutions Code Section 300 *et seq.* She has been removed from her home as an abused or neglected child for her own protection. Her parents have been found unfit to parent by clear and convincing evidence. The State of California has assumed full parental jurisdiction and responsibility for her upbringing and transition to self-sufficient adulthood. Because of the circumstances applicable to foster children, this population is vulnerable to mental health challenges and other disability. The statistical outcomes for foster youth who age into adulthood are commonly five to ten times the incidence of the general population in terms of post traumatic stress disorder, diagnosed mental

illness, lack of high school diploma or college degree, arrest and incarceration, suicide attempts, unemployment, and homelessness. Up to 40% of the population of California homeless shelters are former foster youth, although comprising .3% of the general population. As such, **Janet D.** and her peers are particularly appropriate for California Mental Health Services Act (Proposition 63) prevention funding. Such state money investment in the legal children of state court judges is particularly appropriate. It is the purpose of this Trust to expend any such funds consistent with the purposes of its source mandate and intent.

Depending on the extent of abuse suffered by this child, both physical and emotional, she may be considered disabled and unable to be employed. In that situation, she would be found eligible for Supplemental Security Income (SSI), a needs-based public benefit program that also includes eligibility for Medi-Cal benefits. The purpose of this Trust is to maintain **Janet D.’s** eligibility for any and all government programs while at the same time supplementing the public assistance to which she may be eligible. The funds in the Trust will be available to supplement basic needs and provide for special needs.

Accordingly, the primary purpose of this Trust is to meet **Janet D.’s** special and supplemental needs in a manner that will preserve her autonomy, person independence and dignity, mental health and contributive self-sufficiency as an adult. The following Trust provisions should be interpreted in light of these concerns.

ARTICLE THREE

3.01 Distribution of Income and Principal. The Trustee shall, in the Trustee’s sole and discretion, subject to the terms and intent of the court approved “plan”, pay or apply for the benefit of the beneficiary, such amounts from the principal or income of the Trust amounts

tendered to him at 6 month intervals consistent with the trust plan outlined *infra*. The beneficiary shall not have access to the principal of the Trust. The Trustee is prohibited from making any distribution to any governmental entity to replace, reimburse or supplant any public assistance benefit of any county, state, federal or other governmental agency which has a legal responsibility to serve persons with disabilities which are the same or similar to the impairments of the beneficiary herein, and shall not distribute Trust assets to or for the benefit of the beneficiary for such needs as would be provided for in the absence of this Trust by governmental financial assistance and/or benefits and/or by any provider of services.

3.02 “Special Needs” Defined. As used in this document, “special needs” refers to the requisites for maintaining **Janet D.’s** good health, safety, comfort and happiness, when, and only when, in the discretion of the Trustee, such needs are not being provided by any public agency, office or department of the state of California, County of **Ames** or any other state, or of the United States or any private agency, and needs that cannot be provided by Supplemental Security Income.

“Special Needs” shall include, but are not limited to, the following items and services:

- Counseling
- Housing
- Household furniture and furnishings
- Phone service and other necessary utilities
- Rent at a location consistent with her needs and employment or education/training access
- Special food and medical needs
- Clothing
- Education and training for productive employment
- Transportation
- Medical, renter’s and auto Insurance as is prudently required
- Computer equipment, repairs, replacement and internet service

3.03 Not Available. No part of the assets this Trust shall be used to supplant or replace public

assistance benefits of any county, state, federal or other governmental agency which has legal responsibility to serve persons whose situations are the same as or similar to those of **Janet D.**

3.04 Unavailability. For purposes of determining eligibility for such benefits, no part of the principal or undistributed income of the Trust shall be considered available to him. If the Trustee is requested to release principal or income of the Trust to or on behalf of **Janet D.** to pay for equipment, medication or services which any government agency is authorized to provide (were it not for the existence of this Trust), or in the event the Trustee is requested to petition the court or any other administrative agency for the release of the Trust principal or income for this purpose, the Trustee is authorized to deny such request and is authorized to take whatever administrative or judicial steps may be necessary to continue **Janet D.** for eligibility for benefits, including obtaining instructions from a court of competent jurisdiction ruling that the Trust corpus is not available to **Janet D.** for eligibility purposes. Any expense to the Trustee in this regard, including reasonable attorney's fees, shall be a proper charge to the Trust estate, where consistent with the plan terms below, or subject to prior court approval

3.05 Not Assignable. No interest in the principal or income of this Trust shall be anticipated, assigned or encumbered, or shall be subject to any creditor claim or legal process, prior to its actual receipt by the beneficiary. The beneficial interest in this Trust and the principal and income rights shall be free from interference or control by any creditor of the beneficiary and shall not be liable to attachment, execution, bankruptcy or other process of law.

The Trust is to be conserved and maintained for **Janet D.**'s special needs until she is self-sufficient or reaches 29 years of age, whichever occurs first. No part of the *corpus* hereof, neither principal nor income, shall be construed as part of her "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 California, or of any other city, county or state government, or by the federal government or any other public or private agency.

3.06 “Self Sufficient” Defined. As used in this document, “self sufficient” shall be defined as the “ability to engage in substantial gainful activity” as defined by the Social Security Administration, to a degree satisfying basic subsistence costs, including housing, food, insurance, transportation to reach employment, clothing and utilities. If **Janet D.** is not receiving SSI or any other public benefits, whether **Janet D.** is self sufficient shall be determined by the court, upon the advice of the Trustee and counsel for **Janet D.**.

3.07 Plan for Special Needs Amelioration and Self-Sufficiency Preparation Ages 16 to 18.

When **Janet D.** reaches 16 years of age, she will receive Independent Living Program services. These services will include instruction in basic adult-related skills — opening a bank account, seeking employment, applying to post-secondary schools, *et al.* As part of this preparation for aging into adulthood, she, her counsel, involved social workers, and her Court Appointed Special Advocate (CASA) (if any) shall consult and recommend to the court a person to serve as her trustee under this trust arrangement. The court shall select a trustee accordingly. If not already a trained CASA, licensed foster care provider or attorney, the County shall provide necessary training in the role and responsibilities of the instant trustee position. That trustee shall be given information about the beneficiary from the social worker assigned to her, and from her counsel and others as useful. The proposed trustee and Janet D. shall appear in court when the appointment is made, which shall be prior to 90 days before Janet D.’s 18th birthday. The court

shall review with both the steps to be undertaken to develop a “self-sufficiency” special needs plan as outlined below. That plan shall be implemented upon the completion of the Section 391 hearing, after which **Janet D.** will be a legal adult and her status as a perfected beneficiary shall commence.

3.08 Plan for Special Needs Amelioration and Self-Sufficiency Post - 18 Years of Age. During the period of from age 16 to age 18, and no less than 90 days prior to aging into adulthood, Trustee **JAMES SMITH**, having been proposed and found qualified under section 3.07 supra, shall develop a “self sufficiency” special needs plan, attached as Exhibit A hereto. That plan will include the following elements, to be attached to this trust agreement and incorporated herein as though fully set forth.

1. Where **Janet D.** will reside upon reaching the age of majority, including address, circumstances, expected roommates, and estimated rental costs.
2. What **Janet D.** will seek or continue educational endeavors, what institution, when she will apply, when classes are expected to begin, what courses or area of study she will register for..
3. What occupation or employment for which **Janet D.** expects to prepare, and how she will research available opportunities.
4. How **Janet D.** will transport herself, including possible auto purchase, including expected auto insurance costs.
5. Where, how and when **Janet D.** will open a bank account for the deposit of funds.
6. A plan for appropriate therapy/counseling, including expected cost and timing – to be arranged to not conflict with educational/employment requirements.

7. A budget showing expected monthly expenses for rent, transportation (auto payments, insurance, gasoline), food, utilities, clothing.

8. A plan for revenue to meet the budget, including necessary allocations from the periodic payment by the court to the trustee, and the expected amounts and check payees to be written by the trustee monthly.

The plan and budget shall be calculated for adjustment at six month intervals. The sum expected from the Trust shall be payable at those intervals to the trustee by the court from the trust account. The trustee shall report to the court at those six month intervals before receiving the next semi-annual payment for disbursement. Some of the funds may be written to the beneficiaries bank account where a corporate or institutional payee is not available or involved (e.g. for food and other individually purchases necessities under the approved plan and budget).

The trustee may take for his own account up to _____ % (no more than 8%) of each trust 6 month outlay for his or her expenses and time.

The “coach” (trustee) shall call the beneficiary no less than weekly to inquire about progress and problems and shall visit personally with **Janet D.** at least once a month and at least once every sixty days shall visit at the place of residence of **Janet D.** The six month report from the coach (trustee) to this court shall include (a) a description of progress made toward self sufficiency, (b) a report on disbursements, (c) a report on other public benefits or scholarships for which **Janet D.** may be qualified and efforts to secure those benefits either for addition to the trust *corpus*, or to offset her other costs in achieving self-sufficiency, (d) a description of any proposed plan and budgetary changes, (e) a description of **Janet D.**’s agreement or disagreement with the current or proposed plan and budget. The court may review said report and tender the

next six month payment, or may schedule a hearing at the request of the county, the trustee, **Janet D.** or Janet D.’s counsel to consider progress and changes to the plan or the budget.

ARTICLE FOUR

4.01 Termination. The Trust shall terminate upon the beneficiary reaching the age of 29, the death of the beneficiary, the beneficiary becoming self sufficient or upon the exhaustion of the Trust estate, whichever occurs first. If terminated by death, the Trustee shall pay the beneficiary’s funeral and burial expenses, outstanding bills and fees. After the final accounting is approved by the Court and the court approved fees are paid, the Trustee shall pay any additional funds remaining in the Trust into the Court for distribution as the Court shall determine to other youths eligible for similar special needs trust status. If terminated by the beneficiary becoming self sufficient or reaching the age of 29, the Trustee shall similarly contribute any remaining balance into the court for redistribution to others eligible for such special needs trust status.

ARTICLE FIVE

5.01 Trustee. **JAMES SMITH**, shall be the Trustee, and shall be designated for identification purposes, as the “Coach” of Janet D. Whenever the term “coach” is used with reference to **JAMES SMITH’S** role under this Trust, that reference invokes the sole and full meaning of “trustee” under the California Probate Code. The Coach may resign by petitioning the court to appoint a successor trustee. That resignation shall be effective upon filing an accounting with the court and the transfer of all assets to the successor trustee.

5.02 Exculpatory Clause. No Trustee shall be liable to any person interested in this Trust for any act, failure to act, or default unless it results from the Trustee’s bad faith, willful misconduct or gross negligence.

5.03 Accounting. The Trustee shall make an accounting of all disbursements and activity undertaken on behalf of the Trust. The Trustee shall prepare and file accountings with the court according to the California Probate Code §2620 and §1060. The Trustee is responsible for financial management and investment and shall have the powers, limitations and authority according to the laws of the State of California, applicable to Guardians and Conservators of the state pursuant to California Probate Code §2401, and following, and as may hereafter be amended.

5.04 Specific Powers, Duties and Restrictions. The Trustee shall also have the following specific powers, duties and restrictions:

- (1) The authority to administer the Trust estate pursuant to the standards set out in California Probate Code § 16040, consistent with the approved plan and budget..
- (2) Employ such agents, attorneys, accountants and appraisers as seem reasonably necessary and to rely upon their legal, tax or other expert advice, and to pay them reasonable fees for said services from the Trust estate, where authorized under the court approved plan and budget..
- (3) Post bond, as directed by the court, for the assets and income of the Trust pursuant to California Probate Code §2320, and following.
- (4) The duty to amend the Trust if it does not comply with the Public Benefit Program for which the beneficiary is eligible.
- (5) The authority to lend funds to the beneficiary believes such a loan to be in the beneficiary's best interest. The Trustee shall obtain prior court approval for gifting, hypothecation, borrowing, loans (other than to the beneficiary) and sales

of assets as would be required by a guardian or conservator of the estate. Such a loan may be made on an emergency basis, but shall be subject to approval and appropriate financial adjustment of the pending plan and budget by the court at the 6 month review proceeding described above.

- (6) The Trust shall pay for court approved investigation costs, fees for guardians, conservators, their attorneys and court appointed counsel as well as other costs of administration approved by the court consistent with the approved plan and budget.
- (7) Prior court approval shall be required for investments other than those listed in Probate Code §2574(a).

ARTICLE SIX

6.01 Applicable Laws. This Trust has been accepted by the Trustee in the State of California and its validity, construction, and all rights under it shall be governed by the law of that State. This provision shall apply regardless of any change in the place of the administration of the Trust, or the change of residence of any Trustee or beneficiary.

EXECUTED at Sacramento, California, on _____, 2009, pursuant to that certain “Order Approving the **Janet D.** Irrevocable Special Needs Trust.”