

DECLARATION OF TRUST OF THE Z POOLED TRUST

THIS DECLARATION OF TRUST dated July 30, 2007 as hereby amended and restated as of December 13, 2016, is established by THE Z FOUNDATION, a California Non Profit Corporation.

ARTICLE 1 ESTABLISHMENT OF TRUST

1.1 Trust is Established. The Trustee hereby establishes a pooled trust pursuant to 42 U.S.C. §1396p, to be made available for national use, for the benefit of Beneficiaries under this Trust.

1.2 Name of Trust. The name of this Trust is THE Z POOLED TRUST.

1.3 Initial Funding of Trust. Concurrently with the execution of this Declaration, the 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, Grantor Contributions.

1.4 Irrevocability. This Declaration of Trust and the Trust created hereunder shall be irrevocable.

1.5 Amendments to Trust. Notwithstanding the irrevocability of this Declaration of Trust and the Trust created hereunder, as set forth in paragraph 1.4 above, this Declaration and the Trust created hereunder may be amended from time to time to effectuate its purposes and intent by order of the appropriate Court. The Trustee may also, but is not required to, amend this Declaration and the Trust created hereunder so that it conforms with any changes and/or interpretations of statutes, rules, or regulations that are approved by any governing body or agency relating to 42 U.S.C. §1396p or related statutes, including but not limited to state statutes and regulations that are consistent with the provisions and purposes of the Omnibus Budget Reconciliation Act of 1993, amending 42 U.S.C. § 1396p.

ARTICLE 2 DEFINITIONS

2.1 "Trustee" means THE Z FOUNDATION, or its successor or successors.

2.2 "Co-Trustee" means an entity selected by the Trustee and designated as such to assist with the management, administration, allocation, and disbursement of Trust assets and property, provided such entity must meet the requirements to establish and manage a pooled special needs trust and carry on activities in compliance with 42 u.s.c. §1396p(d)(4)(c).

2.3 "Grantor" means a parent, grandparent, or legal guardian of a Beneficiary, a Beneficiary himself or herself, or any person or entity acting pursuant to an order by a court, who

contributes money and/or property to the Trust. Grantor shall also include, when applicable, any person or entity that contributes his, her, or its own property to the Trust for the sole benefit of a Beneficiary, whether by gift, will, contract, or agreement.

2.4 "Beneficiary" means a disabled person, 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, and who a Grantor shall specify as the sole recipient of services and benefits under any one of the particular Trust sub-accounts created under and within this Trust by such Grantor.

2.5 "Legal Representative" means a legal guardian, conservator, agent acting under an appropriate power of attorney, trustee, representative payee, or any other legal representative or fiduciary of a Beneficiary.

2.6 "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, and in the case of Conservatorship proceeding the form of the Joinder Agreement shall be as attached hereto as Exhibit A, as may be only modified by the Court.

2.7 "Trust sub-account" means that portion of the entire Trust estate that is established and managed for the sole benefit of a Beneficiary.

2.8 "Government assistance" means all services, benefits, medical care, financial assistance, and any other assistance of any kind 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 Supplemental Security Disability Income program (SSDI), and the Medicaid program, together with any additional, similar, or successor public programs.

2.9 "Non-support payments" means payments made by the Trustee for supplemental needs or supplemental care.

2.10 "Supplemental care" and "supplemental needs" may be used conjunctively, interchangeably, or separately as the context requires, and the terms shall always 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.

ARTICLE 3 SPENDTHRIFT PROVISIONS

3.1 **Beneficiaries Have No Claim on Trust Assets.** This Trust shall not be reduced in value by creditors of any of the Beneficiaries. The public and private assistance benefits of the Beneficiaries should not be terminated or made unavailable to them because of this Trust or the assets held in any Trust sub-account for their benefit. This is not a support trust, and assets held in this Trust and the sub-accounts of this Trust are not intended for the primary support of the Beneficiaries and shall only be used for their supplemental care and/or supplemental needs. The Grantor and Trustee do not owe any obligation of support to any of the Beneficiaries, and none of the Beneficiaries have any right of entitlement to the Trust corpus or income, except as the Trustee elects to disburse the same in its sole, complete, absolute, and unfettered discretion.

The Trustee may act unreasonably in exercising its discretion, and the judgment of any other person or entity shall not be substituted for the judgment of the Trustee.

3.2 **Trust Assets Not Subject to Creditors of the Beneficiaries.** No part of this Trust, or any Trust sub-account, neither principal nor income, shall be subject to anticipation or assignment by any of the Beneficiaries, nor shall it be subject to attachment or control by any public or private creditor of any of the Beneficiaries. No part of this Trust, or any Trust sub-account, neither principal nor income, may be taken by any legal or equitable process by any voluntary or involuntary creditor, including those who have provided support and maintenance for a Beneficiary. Under no circumstances may any Beneficiary compel a distribution from the Trust sub-account maintained for that Beneficiary or from any other part of the Trust estate.

ARTICLE 4 GRANTOR CONTRIBUTIONS

4.1 **Grantor's Intent to Establish a Supplemental Fund.** In making contributions to the Trust, it shall not be the intention of any Grantor to displace any public and/or private financial assistance that may otherwise be available to any Beneficiary. It shall be the specific intention of all Grantors to establish a supplemental fund pursuant to 42 U.S.C. §1396p and to limit the Trustee's disbursements to, or on behalf of, a Beneficiary to that respective Beneficiary's supplemental care and supplemental needs only.

4.2 **Irrevocability of Joinder Agreements.** Subject to approval by the Trustee, the Trust shall be effective as to any particular Beneficiary upon contribution of property and/or money ("Property") to the Trust and execution of a Joinder Agreement by a Grantor. Upon approval by the Trustee, and delivery of Property that is acceptable to the Trustee, the following provisions apply:

4.3 the Trust shall be irrevocable as to such Grantor and Beneficiary;

4.4 the contributed Property shall not be refundable to the Grantor of such Property;
and,

4.5 the designation of the respective Beneficiary may not be revoked or changed.

4.6 **Effect of Grantor's Contribution.** Specifically subject and subordinate to Article 3 above, and to the Trustee's sole and absolute discretion in making distributions, the effect of a Grantor's contribution to the Trust as it applies to any one particular Beneficiary is such that total distributions made on behalf of a Beneficiary shall not exceed an amount equal to the total of all contributions made to such Beneficiary's Trust sub-account, plus any undistributed income.

4.7 **Future Transfer of Property.** Property, or interests in property, may be designated for future transfer by a Grantor as a contribution to the Trust. Such designated contributions may be revoked by the Grantor at any time during that Grantor's lifetime and continued competence, provided the Grantor gives prior written notice to the Trustee or to the Co-trustee or agent designated for such purposes by the Trustee. Such written notice shall be by certified mail, return receipt requested. Examples of contributions designated for future transfer include, but are not limited to, a life insurance policy on the Grantor's life in which the Trust is

designated as a beneficiary, or the Trust being named as a beneficiary of any future interest in property, such as that which might pass by way of a Grantor's Last Will and Testament.

4.8 **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 shall be made in accord with the provisions of this Article 5 during the lifetime of a Beneficiary.

5.1 **Distributions Within Discretion of Trustee.** The Trustee shall pay or apply for the supplemental care or supplemental needs of each 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 or advisable or as directed by a duly appointed Conservator of the Beneficiary. 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 replace, or to disqualify a Beneficiary from receiving, government assistance. The Trust corpus and income is specifically not available to any Beneficiary except to the extent of distributions made by the Trustee to a Beneficiary. No distributions should 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. The Trustee may consider the future needs of a Beneficiary when making distributions or when considering requests for distributions but shall not be required to do so. The Trustee should refuse any request for payments from this Trust for services that any public or private agency has the obligation to provide to Beneficiaries who otherwise qualify for such assistance.

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 this Trust 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 life saving;

5.3.3 supplemental nursing care, rehabilitative and/or occupational therapy services;

5.3.4 care appropriate for a Beneficiary that assistance programs may not or do not otherwise provide;

5.3.5 expenditures for travel, companionship, and other expenditures that will improve the quality of a Beneficiary's physical, emotional, psychological, and/or spiritual life;

5.3.6 items of a similar nature to those contained in sub-sections a - f above, and such items as may be specified in a Joinder Agreement.

5.4 The Trustee, in its sole and absolute discretion, may make any payment from a Trust sub-account as follows:

5.4.1 in any form allowed by law;

5.4.2 to any person deemed suitable by the Trustee; and/or,

5.4.3 by direct payment for the expenses of a Beneficiary.

ARTICLE 6 DISTRIBUTIONS AT THE BENEFICIARY'S DEATH

6.1 Upon the death of a beneficiary, any amounts that remain in that beneficiary's trust sub-account shall be administered so as to conform with all of the requirements of 42 U.S.C. §1396p and/or related statutes, including state statutes and regulations that are consistent with the provisions and purposes of the omnibus budget reconciliation act of 1993, amending 42 U.S.C. § 1396p and pertaining to reimbursement to the states for government assistance provided on behalf of the individual beneficiary. Such property shall be distributed to the state in which the beneficiary received government assistance, based on each state's proportionate share of the total government assistance paid by all of the states on the beneficiary's behalf, to the extent that any such property is not retained by the trust as hereinafter provided, and the excess shall be distributed as provided in the joinder agreement or to the person or persons, excluding the beneficiary, creditors of the beneficiary, the estate of the beneficiary, or creditors of the estate of the beneficiary, in such manner and proportions as shall be designated by the beneficiary by written instrument delivered to the trustee or by specific reference to this power by the beneficiary's last will. Any prospective appointment may be revoked by a subsequent written instrument delivered to the trustee or by specific reference to the revocation by the beneficiary's last will. If the exercise of any of said powers of appointment is inconsistent with any other exercise of said powers, the provisions of the instrument bearing the later date shall prevail. To the extent any or all of the remaining trust estate is not appointed because of the nonexercise or invalid exercise of such power, said remaining trust estate shall be distributed to the Trust under Section 6.2.

6.2 Administrative Fee. The Trust shall be entitled to retroactive reasonable monthly costs of administration for the entire term of the sub-trust account (as determined by the court in the case with court supervised sub-trust accounts) in the amount of \$100.00 per month, any amounts retained in the trust may in the trustee's sole discretion, as to the specific use, instead be used in accord with the following provisions:

6.2.1 for the direct or indirect benefit of other Beneficiaries;

6.2.2 to add disabled persons, as defined in 42 U.S.C. § 1382c(a)(3), who are indigent to the Trust as Beneficiaries; or,

6.2.3 to provide disabled persons, as defined in 42 U.S.C. § 1382c(a)(3), with equipment, medication, or services deemed suitable for such persons by the Trustee.

6.3 California Probate Code Sections 3604 and 3605. Notwithstanding any provisions of this Trust to the contrary, this Trust and each beneficiary's trust sub-account is subject to the provisions and requirements of California Probate Code Sections 3604 and 3605, which require that notice of the beneficiary's death or this Trust's or each beneficiary's trust sub-account's termination be given in the manner provided in California Probate Code Section 1215 to, among others, the State Department of Health Services, the State Department of Mental Health and the State Department of Developmental Services, addressed to the director of those departments at the Sacramento office of such director. The Trustee shall also give notice of the beneficiary's death to any county or city and county or state that has made a written request to the Trustee for such notice or which the Trustee has notice has provided Medi-Cal assistance to the Beneficiary under a state plan under Title XIX of the Social Security Act., addressed to that county or city and county or state at the address specified in the request or for which the Trustee has notice.

ARTICLE 7 EARLY TERMINATION OF TRUST OR TRUST SUB-ACCOUNTS

7.1 Options Upon Termination of Trust. Every reasonable attempt will be made to continue the Trust for the purposes for which it has been established for the lifetime of each respective Beneficiary. It is recognized, however, that the Trustee cannot reasonably be expected to know how future developments in the law, including administrative agency and judicial decisions, may affect the Trust or any of the Trust sub-accounts. If the Trust is terminated or if the Trustee has reasonable cause to believe that the principal and/or income in any Trust sub-account maintained for any Beneficiary will be required to be used for the care of a Beneficiary that has been, or would otherwise be, provided by local, state, or federal government, or an agency or department thereof, the Trustee may, in its sole and absolute discretion, terminate the affected Beneficiary's Trust sub-account as though that Beneficiary had died and treat the property in the sub-account according to the provisions above in Article 6. Sections 6.1 and 6.2, except that after payment of Trust administration fees, Trustee shall either: (i) make reimbursement to the states for government assistance provided on behalf of the individual beneficiary and, the balance remaining in the affected Beneficiary's Trust sub-account shall be distributed to the affected Beneficiary; or alternatively, (ii) the balance remaining in the affected Beneficiary's Trust sub-account shall be distributed to another Section 1917(d)(4)C Medicaid

Pooled Trust and all other payments other than to the secondary pooled trust are expressly prohibited.

7.2 Before making any distribution under paragraph 7.1, the Trustee should consider the tax, Medicaid, and other public benefit consequences to the Beneficiary of any particular distribution.

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 Trust shall pool these sub-accounts for investment and management purposes. The Trustee, or the Trustee's authorized agents, shall maintain records for each Trust sub-account in the name of, and showing the contributed property for, each Beneficiary.

8.2 Taxes. In establishing the Trust, it is the Trustee's intent that each Beneficiary's Trust sub-account be treated as a Grantor Trust for purposes of determining the Beneficiaries' tax liability. To this end, and subject to all relevant provisions of the Internal Revenue Code of 1986, as amended (the Code), so as to realize Grantor Trust status pursuant to Section 677(a)(3) of the Code, the Trustee may apply trust income from each Trust sub-account to the payment of premiums on policies of insurance on the life of each respective Beneficiary without the approval or consent of any adverse party within the meaning of Section 672(a) of the Code. Nothing in this paragraph 8.2 shall in any way affect or modify the intent and/or purpose of the Trust or any of the provisions found in this Declaration of Trust. For the purposes stated herein, all income received, distributed, held, or accumulated by the Trust shall be taxable to the Beneficiary. The Trustee may make distributions directly to the taxing authority of any such amounts of income or principal of the Trust as may become necessary to satisfy the Beneficiary's tax obligations.

8.3 Reports to the Beneficiaries. The Trustee shall report at least annually to each Beneficiary or to such Beneficiary's legal representative. Such report shall include a complete statement of the Trust sub-account assets and all of the receipts, disbursements and distributions to or from such Trust sub-account occurring during the reporting period.

8.4 Inspection of Trust Records by Beneficiary. The Trust sub-account records maintained by the Trustee, along with all Trust records or documentation, shall be available and open at all reasonable times for inspection by the Beneficiary, the legal representative of the Beneficiary, or both. The Trustee shall not be 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. 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.

8.5 Costs of Defending Trust. Costs and expenses of defending the Trust, or any Trust sub-account, including attorneys' 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:

8.5.1 apportioned on a pro rata basis to all Trust sub-accounts; or,

8.5.2 charged only against the Trust sub-account that is affected by the action defended against.

ARTICLE 9 TRUSTEE PROVISIONS

9.1 **Trustee May Seek Advice.** 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. Associated costs, if any, shall be a proper expense of the Trust and may be apportioned on a pro rata basis to all Trust sub-accounts or charged only against the Trust sub-account about which the Trustee seeks such advice or assistance.

9.2 **Designation of Co-Trustee.** The Trustee may designate a Co-Trustee, or Co-Trustees, as it may deem, in its sole and absolute discretion, to be necessary or advisable.

9.3 **Trustee Identification of Programs.** The Trustee may, but is not required to identify private or governmental programs that may be of legal, social, financial, developmental, or other assistance to Beneficiaries, or to create programs when such programs do not exist. In no event, however, shall the Trustee be liable to any Beneficiary for failure to identify all programs or resources that may be available to such Beneficiary or to create programs when such programs do not exist

9.4 **Scope of Trustee's Power.** Except as may be otherwise provided in this Declaration, and for so long as the Trustee, is prudent in administering the Trust, the Trustee may serve without bond and shall exercise all powers under any and all Federal and State laws that may exist and be applicable to trusts, in effect on or after the execution of Joinder Agreements by the Grantors. Should bond be necessary for any reason whatsoever, such bond shall be a proper expense of the Trust.

9.5 **Trustee's Discretion to Accept Beneficiaries.** If the Social Security Administration or any authorized governmental entity has not made a determination that the Beneficiary is a disabled person, the Trustee is authorized to accept such Beneficiary within its discretion if it has made a reasonable determination that the Beneficiary is a disabled person as defined in 42 U.S.C. § 1382c (a)(3).

9.6 **Trustee to Receive Full Consideration for Trust Assets.** No authority described in this Declaration, 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 an adequate or full consideration in money or money's worth, or to enable any person to borrow the assets of any Trust sub-account, directly or indirectly, without adequate interest or security.

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. All such compensation and reimbursement shall be made subject to court approval or as otherwise provided in the Joinder Agreement.

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, provided that such successor trustee must meet the requirements to establish and manage a pooled special needs trust and carry on activities in compliance with 42 u.s.c. §1396p(d)(4)(c). A successor Trustee shall assume its duties under this Declaration without any liability for the acts or omissions of any predecessor Trustee. The provisions of this paragraph 9.8 shall also control if the Trustee ceases to exist, is dissolved, or can no longer serve as Trustee for any other reason. In conjunction with any action taken under this paragraph 9.8, a final accounting shall be made by the Trustee to the Beneficiaries and to the Co-trustee(s), if any.

ARTICLE 10 GENERAL PROVISIONS

10.1 Requirement to Furnish Bond. The Trustee shall furnish bond for the faithful performance of any duties created under this Declaration if bond is required by any law or court of competent jurisdiction.

10.2 Court Supervision. Each sub-Trust established under this Declaration exceeding \$20,000.00 in value shall be administered subject to the continuing jurisdiction of the California Superior Court, Los Angeles County; provided, however, should another court order creation of sub-Trust account for a Beneficiary under its jurisdiction, then the Trustee shall be subject to supervisions of such Court respecting that sub-Trust account, if so ordered. However, any proceedings to seek judicial instructions or a judicial determination may be initiated by the Trustee, or any Co-Trustee that is specifically named as such by the Trustee, in any court having jurisdiction of matters relating to the construction and administration of trusts, subject to the Trustee's choice of jurisdiction and venue, unless an agreement between the Trustee and a Co-trustee provides to the contrary, in which event such agreement shall control.

10.3 Governing Law. This Trust shall be governed exclusively by, and interpreted exclusively in accordance with, the laws of the United States and the State of California.

10.4 Procedural Provisions. Any conforming and/or effectuating amendments that might be made pursuant to paragraph 1.5 above, may be made unilaterally by the Trustee without notice to any party and/or Beneficiary and may be made effective retroactively or prospectively as the Trustee deems most appropriate in its sole discretion. Any provision of this Declaration and the Trust created hereunder that may disqualify any Beneficiary for government assistance of substantial value shall be automatically, ab initio, amended, limited or void, as required to avoid any such disqualification. In any instance where the Trustee deems that the Trust should be conformed to particular state statutes and/or regulations, any such conforming amendments

may be effectuated through the Joinder Agreements used in the particular State(s) in question without effecting the operation of the Trust in any other State(s).

10.5 Severability. Any provision of this Declaration that is adjudged invalid or unenforceable under the laws of any place where the terms of the Declaration are to be performed, or are sought to be enforced, shall be deemed inoperative without invalidating such provision elsewhere or any of the other provisions of this Declaration or without invalidating such provision in any other place where the terms of the Declaration are to be performed.

10.6 Section Headings. Section headings are for purposes of convenience only and shall have no bearing on the interpretation of any provision of this Declaration of Trust.

IN WITNESS WHEREOF, the undersigned hereby subscribes to the above Declaration of Trust on the date and year first written above.

THE Z FOUNDATION

By: 

JOEL M. SIMON, President

By: 

SCOTT M. FARKAS, CFO

(“Trustee”)

My Comm. Expires Sep 18, 2011
Los Angeles County
Notary Public - California
Commission # 2124384
KEVIN L. ALPERSTEIN



KEVIN J. ALPERSTEIN
Commission # 2124364
Notary Public - California
Los Angeles County
My Comm Expires 2018

