

**DECLARATION OF TRUST OF
THE SOUTH FLORIDA POOLED TRUST**

THIS DECLARATION OF TRUST is made this ____ day of _____, 2007, by The Arc of South Florida Pooled Trust, Inc., a Florida 501(c)(3) non-profit corporation.

**Article I
Establishment of Trust**

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

1.2 Name of Trust. The name of the Trust established under this Declaration is The South Florida Pooled Trust (the "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 IV, 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. The Trustee may also, but is not required to, amend this Declaration and the Trust created hereunder so that it conforms with any statutes, rules, or regulations that are approved by any governing body or agency relating to 42 U.S.C. § 1396p 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.

**Article II
Definitions**

2.1 "Trustee" means The Arc of South Florida Pooled Trust, Inc., or its successor or successors.

2.2 "Co-Trustee" means a person, entity, or both, selected by the Trustee to assist with the management, administration, allocation, and disbursement of Trust assets and property.

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 also includes 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 a durable 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.

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 III 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. Assets held in this Trust and the sub-accounts of this Trust are not 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 IV Grantor Contributions

4.1 Grantor's Intent to Establish a Supplemental Fund. In making contributions to the Trust, it is the not the intention of any Grantor to displace any public and/or private financial assistance that may otherwise be available to any Beneficiary. It is 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, this 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:

- a) the Trust shall be irrevocable as to such Grantor and Beneficiary;
- b) the contributed Property shall not be refundable to the Grantor of such Property, except as is otherwise provided below in paragraph 7.2; and,
- c) the designation of the respective Beneficiary may not be revoked or changed.

4.3 Effect of Grantor's Contribution. Specifically subject and subordinate to Article III 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 distributions made on behalf of a Beneficiary shall not exceed the total of all contributions made to such Beneficiary's Trust sub-account, plus any undistributed income, minus all distributions made on behalf of such Beneficiary.

4.4 Future Transfer of Property. Property, or interests in property, can 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.

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

Article V

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 V 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. The income not distributed from any 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. 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:

- a) medical, dental, and diagnostic work and treatment for which there are no available private or public funds;
- b) medical procedures that are desirable in the Trustee's sole discretion, even though they may not be medically necessary or life saving;
- c) supplemental nursing care, rehabilitative and/or occupational therapy services;

- d) differentials in cost between housing and shelter for shared and private rooms in institutional settings;
- e) care appropriate for a Beneficiary that assistance programs may not or do not otherwise provide;
- f) expenditures for travel, companionship, experiences, and expenses in bringing a Beneficiary's siblings and others for visitation;
- g) 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:

- a) directly to a Beneficiary;
- b) in any form allowed by law;
- c) to any person deemed suitable by the Trustee; and/or,
- d) by direct payment for the expenses of a Beneficiary.

Article VI 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 deemed surplus Trust property and shall be retained by the Trust. In the Trustee's sole discretion, such retained surplus Trust property shall be used in accord with the following provisions:

- a) for the direct or indirect benefit of other Beneficiaries;
- b) to add disabled persons, as defined in 42 U.S.C. § 1382c(a)(3), who are indigent to the Trust as Beneficiaries; or,
- c) to provide disabled persons who are Beneficiaries, as defined in 42 U.S.C. § 1382c(a)(3), with equipment, medication, or services deemed suitable for such persons by the Trustee.

Gifts or devises to the Trust shall be similarly treated unless a specific purpose is specified by the donor. To the extent surplus Trust property is not retained by the Trust, such property shall be distributed to each 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.

6.2 The Trustee shall not allocate any amounts remaining in the Trust after a Beneficiary's death pursuant to section 6.1 above to the general operating fund of the Trustee which

could be used for purposes unrelated to the Trust or Beneficiaries.

Article VII

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. 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 Trustee has reasonable cause to believe that the income or principal 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, exercise one of the following provisions:

- a) 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 VI;
- b) determine that the Trust has become impossible to implement for the affected Beneficiary and treat the property in that Beneficiary's Trust sub-account according to the provisions found below in paragraph 7.2; or,
- c) continue to administer the affected Beneficiary's Trust sub-account under separate arrangement with the affected Beneficiary or such Beneficiary's legal representative.

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

7.2 Refunds to Grantor Permitted. The Trustee, in its sole and absolute discretion, may refund all or any portion of the property in a Trust sub-account to a Grantor, excluding any court, if it becomes impossible to fulfill the conditions of the Trust with regard to the respective Beneficiary for reasons other than the death of the Beneficiary. In the event such Grantor is not living at the time the Trustee makes a refund, then payment may be made to the estate of the Grantor.

Article VIII

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 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. Further, the Trustee shall also furnish a financial statement concerning the Trust at least annually.

8.3 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.

8.4 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:

- a) apportioned on a pro rata basis to all Trust sub-accounts; or,
- b) charged only against the Trust sub-account that is affected by the action defended against.

Article IX 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.

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, use surplus trust property as it becomes available to assist in identifying 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 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 may exercise all powers under any and all Federal and Florida laws that may exist and be applicable to the Trust, in effect on or after the execution of Joinder Agreements by the Grantors.

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 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. Payment shall be made in accord with a schedule of fees and charges as specified 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. The Trustee shall designate a successor Trustee, unless there exists an agreement with a Co-trustee that contains a contrary provision, in which event such agreement shall control. 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.

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

Article X

General Provisions

10.1 No Requirement to Furnish Bond. Neither the Trustee, nor any Co-trustees, shall be required to 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, no surety shall be required on such bond.

10.2 Trust to Be Free From Court Supervision. The Trust established under this Declaration shall be administered free from the active supervision of any court. 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, 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 and Principal Place of Administration. This Trust shall be governed exclusively by, and interpreted exclusively in accordance with, the laws of the United States and the State of Florida and the principal place of the administration of the Trust shall be Miami-Dade County.

10.4 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.

10.5 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.

WITNESSES

**THE ARC OF SOUTH FLORIDA
POOLED TRUST, INC.**

By: _____

Printed Name

Printed Name

Its: _____

Printed Name

STATE OF FLORIDA))
COUNTY OF MIAMI-DADE))

The foregoing Declaration was acknowledged before me this ____ day of _____, 2007, by

_____ [] who is personally known to me or [] who has
produced _____ as identification.

NOTARY