Cause No. _____

Guardianship of: _____

Guardian of the Person and Estate: Court-Ordered Instructions

Thank you for agreeing to accept appointment as the Guardian of the Person and Estate of a minor or incapacitated individual (the Ward). The Probate Court has chosen to entrust you with the responsibility of representing the interests of the Ward and managing the Ward's assets.

As soon as you have qualified, you will be a "fiduciary" – someone who has *a legal responsibility to act for the benefit of another*. As a fiduciary, you are expected to act with the utmost care and in the best interests of the Ward, while also considering the interest of others who have a stake in or claim to the assets under your management. At times, this may mean acting in a manner contrary to your own interests. Because being a fiduciary gives rise to certain legal obligations and responsibilities that require legal expertise, Texas law requires that you continue to be represented by an attorney who will assist you in representing those for whom you are responsible.

☐ Your activities as Guardian are governed by Texas law and the order appointing you Guardian. *Before you engage in <u>any</u> transactions as Guardian, you must become familiar with the types of allowable actions you may take under the order and relevant law.* These instructions will help you, but they are only a *supplement* to the information that has been or will be given to you by your attorney and are not a substitute for legal advice. Your attorney will help you understand what is required of you as Guardian of the person and estate. You should consult with your attorney – not the Court – if you have questions, although you may call the Court when you have a question about your Annual Report.

1. **Before the hearing** (for cases on the uncontested guardianship docket):
   - You must read these Court-Ordered Instructions and initial each of the 13 boxes in the margins to indicate you understand the italicized points made in the text to the right of each box.
   - You must sign these Court-Ordered Instructions before a notary. The original will be filed with the Clerk's Office and put in the file; the Court will make a copy for you to keep and refer to as you serve as Guardian.
   - You must fill out your Initial Report on the Condition and Well-Being of the Ward.
   - You must fill out the Guardianship General Information form for the Court's internal files.

2. **Before you leave the Court after the hearing:**
   - You must take and file your Oath – your signed and sworn (or affirmed) commitment to "discharge faithfully the duties of guardian."
   - You must file your Initial Report on the Condition and Well-Being of the Ward.

3. **You must file your bond <u>within 20 days after the Court signs the order</u> granting letters of guardianship.**

Letters of Guardianship

☐ *Your authority to act on the Ward's behalf does not begin until you have qualified – which requires both that (1) you have taken your oath and (2) the Court has approved your bond.* At that time, the clerk of the Court is authorized to issue letters of guardianship to you. These letters serve as evidence to third parties of your authority to act on the Ward's behalf. *Letters of Guardianship are not automatically sent when you have qualified; you need to request them from the Clerk's office (Suite 120 at the Courthouse, or call 979-361-4128).*

Letters of guardianship expire one year and four months after the date of issuance unless renewed. Letters can be renewed and reissued by the clerk of the Court *after* the Court approves *both* the guardian's Annual Report of the Person *and* the guardian's Annual Account. New Letters of Guardianship are not automatically sent when your Annual Report and Annual Account are approved. Contact the clerk's office to order letters of guardianship (see previous paragraph).

Time-sensitive requirements after you qualify as Guardian of the person and estate

✸✸✸ Texas law includes other key deadlines for guardians of the person and estate *that are tied to the date you qualify to serve as Guardian*. The date you qualify is the date when the Court approves your bond *or* when you take and file your oath, *whichever is later*.

1. **Within 30 days of the date you qualify**, your attorney, on your behalf, must file an Inventory, Appraisement, and List of Claims. Texas law requires your attorney to review and sign this inventory. The inventory should reflect the fair market values of the assets *as of the date of your appointment* and must be verified by your sworn or affirmed affidavit. This inventory must contain a complete list of all the real estate located within the State of Texas and must list all personal property, regardless of where it is located. Texas Estates Code Sections 1154.051-1154.052.[1] If at any time during the administration of this estate you discover additional property, your attorney, on your behalf, must file a supplemental inventory reflecting the newly acquired assets. Estates Code Section 1154.101.

2. **Within 30 days of the date you qualify**, your attorney, on your behalf, must file an application requesting a monthly or annual allowance to be expended from guardianship funds for the education and maintenance of the Ward and the maintenance of the Ward's property – unless an allowance was ordered at the time you were appointed Guardian or such an allowance is inappropriate. Note that even though the Court sets a monthly allowance, you still must account for all such expenditures in the Annual Account. See "Spending guardianship funds" on page 5. Make sure you keep receipts for all purchases. Please be aware that you may be required to reimburse the estate for any improper expenditure. See Estates Code Sections 1156.001-1156.004.

3. **Within 180 days of the date you qualify**, your attorney, on your behalf, must file a written application for approval of an investment plan for estate assets – unless you invest those funds according to the investment plan in Estates Code Section 1161.003 (see paragraph below). Your attorney will help you understand the options and take the appropriate steps.

   As Guardian, you have an obligation under Estates Code Section 1161.001 to invest the ward's assets that are not immediately necessary for the education, support, and maintenance of the ward or others the ward supports. You must invest as a prudent person would. In general, you may not make any investment without prior Court

[1] These instructions at times refer to specific sections of the Texas Estates Code, which is the place where statutes governing Texas guardianship law are collected. We realize that most guardians will choose to rely on their attorneys' explanations of the statutes and the actions required by the statutes, rather than ever looking at the Estates Code – and that's fine. But we have included some statutory references for those guardians who may sometimes want to look at the actual statutes. You can find a copy of the Estates Code online at http://www.statutes.legis.state.tx.us/.

approval. However, Section 1161.051 of the Estates Code allows a guardian to have estate assets invested according to Section 1161.003 of the Code without Court order. Section 1161.003 allows "safe harbor" investments such as obligations issued by the United States, tax-supported bonds of the State of Texas or certain bonds of political subdivision of the State of Texas, and federally insured bank accounts.

4. **Claims procedures.** In Chapters 1153 and 1157, the Estates Code outlines time-sensitive requirements for various notices and other actions that are part of the statutory process for Claims Procedures. These Court-Ordered Instructions do not address any of these requirements. Your attorney will lead you through the statutory process for Claims Procedures.

5. **EVERY YEAR within 60 days of the anniversary of the date of you qualified as Guardian,** two pleadings must be filed:

   (1) you must file an Annual Report ("Report on the Condition and Well-Being of a Ward"), **and**

   (2) your attorney, on your behalf, must file a detailed Annual Account.

☐ *Failure to file either an Annual Report or an Annual Account may result in your removal as Guardian and may result in the assessment of fees against you individually and on your bond, and not from guardianship funds. See below and next pages for more information.*

Annual Report ("Report on the Condition and Well-Being of a Ward")

Texas law requires you – as a Guardian of the Person – to file a report each year that covers a 12-month reporting period, with the reporting period beginning on the date you qualify to serve as Guardian. The date you qualify is the date when the Court approves your bond *or* when you take and file your oath, *whichever is later*. Texas law requires that your Annual Report be filed not later than 60 days after the reporting period ends. In your Annual Report, you must answer *each* of the questions on the Report form, including information concerning the Ward's physical welfare, well-being, progress in education (if pertinent), and income. You also will note how many times you visited the Ward in person, and, when you sign the Report, you will declare under penalty of perjury that the Report is true and correct.

- In your Annual Report, you must swear or affirm either that you have paid your bond premium for the next reporting year or that you have filed an approved cash bond.
- You may complete and file your Annual **Report** without the assistance of an attorney. But note that Texas law requires you to work with your attorney to prepare your Annual or Final **Accounts**. Annual **Report** forms ("Report on the Condition and Well-Being of a Ward") are available at the Court's office or on the Court's website http://www.brazoscountytx.gov/index.aspx?nid=332.
- Texas law requires a $25.00 fee for the processing of each Annual Report to determine whether the guardianship continues to be appropriate, unless an affidavit of inability to pay costs is on file.

Annual Account

Each year within 60 days of the anniversary of the date you qualified as Guardian, your attorney, on your behalf, must file a detailed Annual Account, attaching an affidavit in which you swear or affirm that the Annual Account is true and correct. Texas law requires that your attorney must review and sign this accounting. Your attorney will need to get information from you for the Annual Account before the indicated deadline for filing the Annual Account. You will need to consult with your attorney about what needs to be done for the Annual Account and when it

needs to be done. Failure to file an Annual Account may result in your removal as Guardian and may result in the assessment of fees against you individually and on your bond, and not against the guardianship estate.

- As part of your Annual Account, you must swear or affirm that you have paid your bond premium for the next accounting period.

- As part of your Annual Account, you must swear or affirm that you have filed all tax returns and paid all taxes due, with the date, amount paid, and name of the Governmental entity to whom the taxes were paid.

- If you handle cash assets, the Annual Account must show all receipts and disbursements that have occurred in the estate during the year. You must show the status of all claims pending against the estate and the nature and extent of all property currently being administered by you.

- Any cash or securities in your possession or held by any bank or depository must be verified by an appropriate letter or certificate. The bank statement dated on the ending date of the accounting period will suffice for bank accounts.

- If you receive Social Security benefits on the Ward's behalf, you must attach to your Annual Account a copy of the most recent Representative Payee Report you filed with the Social Security Administration (SSA), accounting for your use of those funds. (A report to SSA is required annually.)

In your role as Guardian of the Estate

1. **General powers and duties.** As Guardian of the Estate, you must always act in good faith and in the Ward's best interests. Your powers and duties are set out in the order appointing you Guardian. If you are granted full powers, or the authority to manage assets, it is your duty to take possession of all property belonging to the Ward *once you have qualified* – but do not act until you have qualified. A guardian of the estate is entitled to possess and manage all property belonging to the ward; to collect all debts, rentals, or claims that are due to the ward; to enforce all obligations that are due to the ward; and to bring and defend suits by or against the ward. Estates Code Sections 1151.101 and 1151.151-1151.155.

2. **Previously existing powers of attorney.** Any durable powers of attorney previously executed by the Ward terminate as soon as you have qualified as Guardian of the estate. If the Ward had executed powers of attorney, talk to your attorney about what's required of the attorney in fact or agent under Estates Code Section 751.052.

3. **Accounts for guardianship funds.** *Place all guardianship funds in one or more separate accounts in the name of the guardianship – for example, "Jane Doe, as guardian of the estate of John Doe" – separate from your personal funds.* ***Do not commingle the funds of the guardianship estate with your personal funds.*** Retain in a checking account only such funds as are reasonably necessary for the current support and maintenance of the Ward. Place all additional funds in interest-bearing accounts at the highest interest rate then available, unless you have an approved Investment Plan that allows another investment. Make sure all bank accounts are fully insured and do not exceed the FDIC insurance limits.

4. **Spending guardianship funds.**

A. Spending guardianship funds under a Court-ordered allowance. If you have a Court-ordered allowance, you do not need to get further Court approval before spending those funds *for the purposes that were approved in the Court order*. But note the following:

- *Funds that are part of a Court-approved allowance may be spent only for the purposes approved in the Court order setting up the allowance.*
- *Although the Court sets a monthly allowance, you still must account for all such expenditures in the Annual Account, and you must keep receipts from all purchases. One exception: In the rare cases when the Court specifically orders a cash allowance for the Ward, you need not account for or keep receipts from the Ward's purchases from the* ***cash*** *allowance.*
- The Court does not allow case-management fees to be included as part of an allowance. Those fees must always be approved separately.

B. Spending other guardianship funds. Consult your attorney about the very few instances when the law allows an expenditure without Court order. For example, you may pay your bond, pay *some* insurance, and pay *some* taxes without a Court order. ***For everything else:***

- *If a particular expense was not approved in the Court order setting up an allowance, you cannot pay for that expense without first obtaining, through your attorney, a written order of this Court authorizing the expenditure(s)***.**
- *Regardless of purpose, never spend any guardianship funds in excess of your allowance unless you first obtain, through your attorney, a written order of this Court authorizing the expenditure(s)***.**

C. Spending ANY guardianship funds. *You may be subject to removal and held personally liable for any unapproved expenditures if you either (1) spend an allowance for purposes not approved in the Court order setting up the allowance or (2) spend other funds without Court approval.* ***If necessary, cases may be referred to the District or County Attorney for prosecution.***

5. **Non-cash assets (real or personal property).** Preserve, protect, and insure (if insurable) all non-cash assets of this guardianship.

- *Your attorney, on your behalf, must obtain a written order of this Court before you attempt to sell, transfer, lease for more than one year, abandon, or otherwise dispose of any non-cash asset of this guardianship.*
- All personal property of the ward in the State of Texas should remain in Texas unless prior Court approval is obtained.

6. **Recordkeeping.** Maintain an accurate and detailed record of all guardianship income and all expenditures of guardianship funds. Keep and organize all bank records and all receipts. You will need all of this information for your Annual Account. Some important specifics:

- *Cash withdrawals of guardianships funds are prohibited, except in the rare cases when a court-ordered allowance specifically allows for the Ward to have a cash allowance.*
- *Keep and maintain receipts for every purchase.*
- *Guardianship expenses should be paid for with guardianship funds.*
- *To be reimbursed for paying a guardianship expense, you must get the Court's permission – but reimbursements are discouraged. Reimbursements will never be approved without receipts.*

7. **Parents who are guardians of the estate of their minor child.** *Note that the natural parents of a minor are obligated to support that child with their own funds, and they may not spend any guardianship funds – corpus or income – without a Court order.* If you, as parent and Guardian, can satisfy the Court by clear and convincing evidence that you are unable to support your child or children without unreasonable hardship, you may be allowed to expend funds of the estate for the ward's benefit. But no funds may be expended without *prior* Court approval, and a hearing usually will be necessary. See Estates Code Section 1156.051.

In your role as Guardian of the Person

1. **General powers and duties.** *The order appointing you as Guardian of the Person and Estate specifies whether you have been appointed as guardian of the person with limited authority or guardian of the person with full authority. Guardians of the person with limited authority have only those powers specifically set forth in the order appointing them. Under Texas law, a guardian of the person with full authority has the rights and duties set out below:*

- The right to have physical possession of the ward and to establish the ward's legal domicile.
- The duty to provide care, supervision, and protection for the ward.
- The duty to provide the ward with clothing, food, medical care, and shelter as completely as the Ward's resources permit.
- The power to consent to medical, psychiatric, and surgical treatment other than the in-patient psychiatric commitment of the ward. (But the guardian of the person of a ward *does* have the power to transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.)
- *If the Ward is an adult, the duty to inform the Ward's spouse, parents, children, and siblings as soon as possible if:*
  - the Ward dies;
  - the Ward is admitted to a medical facility for acute care for three days or more;
  - the Ward has moved; or
  - the Ward is staying at a location other than his or her own residence for more than one week.
- *The duty to provide notice to the Ward in the Ward's native language, or preferred mode of communication, each time you file your Annual Report that you are seeking to continue the guardianship.*

2. **Previously existing medical powers of attorney.** When appointing a guardian of the person, it is the usual practice of this Court to revoke all known and unknown medical powers of attorney

previously executed by the Ward. There are some exceptions, which will always be indicated in the Order appointing the guardian of the person.

3. **Working with Court Visitors.** A Court Visitor may be appointed to visit the Ward to assess the Ward's physical condition and living conditions.

General information

1. **Change of address.** You must notify your attorney of any change in the mailing address of either you or the Ward, and your attorney should notify the Court. You may not move to another state or be absent from this state for more than three months without Court permission. If the Ward moves from this County, consult with your attorney about whether the guardianship should be transferred.

2. **Moving the Ward to a more-restrictive care facility?** *You **may not** move the Ward into a more restrictive care facility until you provide notice to the Court, the Ward, and any person who has requested notice, and only after seven business days following the Court's receipt of the notice. If nobody has objected to the proposed move, then you may move the Ward.*

3. **Consult with your attorney.** *Consult with your attorney on any matter regarding this guardianship that you do not understand.* Failure to follow any of the statutory procedures may lead to your removal as Guardian, and you may be held personally liable.

When the guardianship is ready to be closed

A guardianship is ready to be closed:

- when the Ward regains competency;
- when the Ward dies; or
- when the Ward reaches 18 years of age, for guardianships based solely on minority.

A guardianship of the estate may also be closed when the Ward's funds become exhausted, when the income is negligible, or when the Court determines a guardianship is no longer necessary.

To close a guardianship of the person and estate, you will need to file both a Final Report (with death certificate attached, if applicable) **and** a Final Account. If the Ward has regained competency, you will **also** need an application seeking to have the Ward declared competent (with a sufficient medical certificate), along with a hearing and a Court order regarding competency.

Final Account: To close the guardianship of an estate, your attorney, on your behalf, must file a Final Account. See Estates Code Sections 1204.101-1204.109. Texas law requires that your attorney must review and sign this accounting. The Final Account must show all property that has come into your hands since the last Annual Account, as well as the disposition that has been made of any such property. The Final Account must show the debts that you have paid since the last Annual Account and any debts that remain outstanding, as well as the reason for their non-payment. If any property remains in your possession, it should be fully reported and verified in the same manner as for annual accounts.

After the Court has audited the Final Account and signed an order approving it, the Court will order that any remaining assets be delivered to whomever the Court has determined is legally entitled to the assets. You will need to obtain receipts, because once this delivery has been completed, receipts signed by each person who received the property must be filed with the Court. After all the property has been accounted for and the receipts of delivery approved, the Court will sign an order closing the guardianship and relieving you of any future responsibility in connection with the guardianship. Estates Code Sections 1204.151-1204.152.

Cause No. _____

Guardianship of: _____

I swear or affirm that I have read the preceding seven pages of this document (entitled *Guardian of the Person and Estate: Court-Ordered Instructions*) and that I understand its contents.

By my initials in the 13 boxes in the margins of this document, I specifically affirm that I understand the italicized points made in the text to the right of each of the boxes.

_____ _____

Signature of person who has been or seeks to be appointed Guardian or Co-Guardian Date

STATE OF TEXAS)(
)(
COUNTY OF BRAZOS)(

This instrument was sworn or affirmed before me on _____

by _____.

_____

Notary Public, State of Texas

Notary's Name Printed:

_____

My commission expires _____

By my signature, I – the attorney for the person who has been or is seeking to be appointed guardian or co-guardian – certify that I have discussed with my client(s) the responsibilities of a guardian of the estate.

Attorney: _____ (signature)

State Bar of Texas No. _____