

504140

CAUSE NO. \_\_\_\_\_

In re: GUARDIANSHIP OF § IN THE PROBATE COURT  
ELVIE LOU CRUZ KINGSTON § NUMBER \_\_\_\_\_ OF  
AN ALLEGED INCAPACITATED § HARRIS COUNTY, TEXAS  
PERSON

**Application for Appointment of Temporary Guardian  
Of Person and Temporary Guardian of Estate,  
and**

**Application for Appointment of Permanent Guardian of Person  
NO SERVICE REQUESTED**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Comes now, Nubia Devine, an interested person concerning Elvie Lou Cruz Kingston, the "Proposed Ward," and files this *Application for Appointment of Temporary Guardian of Person*, and for *Appointment of a Temporary Guardian of Estate*, and, *Application for Appointment of Permanent Guardian of the Person, Only*, and respectfully shows the Court the following:

**I. Application for Appointment of Temporary Guardian of Person and Temporary Guardian of Estate**

1. Elvie Lou Cruz Kingston ("Proposed Ward"), the person for whom the appointment of a temporary guardian of the person and the temporary guardian of the estate is sought, is a seventy-seven (77) year old, adult female whose date of birth is March 10, 1945, and whose driver's license

number is unknown. Proposed Ward is an incapacitated person as defined in §1002.017(2), of the Estates Code, having been found to have moderate dementia by a qualified medical doctor. Proposed Ward's permanent residential address is 7514 Moreton Court, Spring, Harris County, Texas.

2. Applicant is a long-time, close friend of Proposed Ward and is a person interested in the welfare of the Proposed Ward. Applicant's address is as follows: Nubia Devine, 12208 Montana Springs Drive, Marble Falls, 78654, Burnet County, Texas.

3. Applicant's sworn Application is based on her own personal knowledge and also, in part, based on the sworn Affidavits from other long-time friends of Proposed Ward, Jonna Caswell-Johnson and Kathie Turner, who Applicant knows to be credible persons. See Exhibits A and B, attached hereto. Based on the sworn Affidavits, including Applicant's sworn pleading, Applicant would show that it would be in Proposed Ward's best interest that Applicant or a suitable person be appointed Temporary Guardian of the Person and that a qualified, third-party fiduciary be appointed Temporary Guardian Estate of the Proposed Ward.

4. In November 2021, Proposed Ward became ill and was admitted into the hospital. At the time, Proposed Ward's niece, Michelle Hartman—who lives in Kansas—purportedly using financial and medical powers of attorney granted by Proposed Ward, took control of Proposed Ward's life. After Proposed Ward was released from the hospital, Michelle Hartman approved Proposed Ward's placement in a rehabilitation facility. Subsequently, Ms. Hartman consented to in-patient placement of Proposed Ward in a psychiatric facility, and effectively, "locked down," Proposed Ward, intentionally isolating Proposed Ward from her friends.

5. In November of 2021, Ms. Caswell-Johnson, a friend of Proposed Ward for 30 years, became aware of Proposed Ward's hospitalization and attempted to visit Proposed Ward. Ms. Hartman prevented Ms. Caswell-Johnson from visiting or speaking to Proposed Ward, purportedly based on COVID.

6. Ms. Caswell-Johnson was later permitted by Michelle Hartman only two, truncated telephone calls, under conditions that highly alarmed Ms. Caswell-Johnson. When Ms. Caswell-Johnson notified Ms. Hartman—in Kansas—that the Proposed Ward had made a report in the first telephone call of physical abuse at the psychiatric facility into which Ms. Hartman had placed Proposed Ward, Ms. Hartman dismissed Ms. Caswell-Johnson's

report as unsubstantiated.

7. On January 20, 2022, Ms. Caswell-Johnson finally was able to visit Proposed Ward for the first time in two and a half months and found Proposed Ward in neglectful, abusive, filthy conditions. Ms. Caswell-Johnson visited Proposed Ward four times in five days, beginning January 20, 2022.

8. On January 24, 2022, on Ms. Caswell-Johnson's fourth visit, the neglectful, abusive, filthy conditions under which she originally found Proposed Ward on January 20, 2022, were unchanged. Exhibit A, P. 3. As a result, after determining that there was no guardianship on file which precluded Proposed Ward's leaving the filthy facility, Proposed Ward left the abusive conditions with Ms. Caswell-Johnson on January 24, 2022, and did not return.

9. On January 24, 2022, Ms. Caswell-Johnson, in the company of Norma Jeter, another thirty-year-long friend of Proposed Ward, brought the Proposed Ward to the office of the undersigned counsel.

10. As stated in Ms. Caswell-Johnson's Affidavit, on January 24, 2022, after an extensive interview with the undersigned counsel, in accord with Proposed Ward's stated wishes Proposed Ward **executed revocations of all financial and medical powers of attorney executed prior to**



January 24, 2022, as to Michelle Cruz Hartman, niece of Proposed Ward and Ernesto “Ernest” Cruz, Proposed Ward’s brother (a two-time convicted felon). In addition, Proposed Ward disqualified both Michelle Cruz Hartman and Ernest Cruz from any appointment as guardian of both Proposed Ward’s Person and Estate. See Exhibits C – H as set out below:

- a. Exhibit C - Revocation of all prior Medical Powers of Attorney appointing Michelle Hartman and/or Ernesto Cruz;
- b. Exhibit D - Revocation all prior Statutory Durable Powers of Attorney appointing Michelle Hartman and/or Ernesto Cruz;
- c. Exhibit E - Medical Power of Attorney Appointing Jonna Caswell-Johnson;
- d. Exhibit F - HIPAA Release, refusing authorization to Michelle Hartman, Ernesto Cruz, or any child of Ernesto Cruz;
- e. Exhibit G - Statutory Durable Power of Attorney Appointing Jonna Caswell-Johnson; and
- f. Exhibit H - Medical Power of Attorney Appointing Jonna Caswell-Johnson.

11. Further, on January 25, 2022, when Ms. Caswell-Johnson returned with Proposed Ward to Ms. Norman’s office, Proposed Ward agreed that she was willing to speak with Richard Barrett, M.D., a psychiatrist who would interview Proposed Ward so he could issue a report regarding her mental

condition. On January 25, 2022, Proposed Ward reaffirmed her earlier statements to Ms. Caswell-Johnson and to Norma Jeter that she wanted Michelle Hartman, Ernesto Cruz, and his children—including Michelle Hartman— to have nothing to do with controlling Proposed Ward’s life and her finances.

12. Ms. Caswell-Johnson’s affidavit further relates that on January 26, 2022, Proposed Ward returned with her to Ms. Norman’s office for the telemedicine mental evaluation appointment with Dr. Barrett. During that mental evaluation appointment, Proposed Ward reiterated to Dr. Barrett her statements made to Ms. Caswell-Johnson and Ms. Jeter regarding her care and the preclusion of her niece, Michelle Hartman, which are set out in the Physician’s Certificate of Medical Examination. Proposed Ward and Ms. Caswell-Johnson left Ms. Norman’s office after Dr. Barrett completed his interview with Proposed Ward. See Exhibit I, Feb. 3, 2022, Physician’s Certificate of Medical Examination.

13. As also set out in Ms. Caswell Johnson’s affidavit, she not only notified Ms. Hartman by text on January 25, 2022, that her powers of attorney were revoked, on January 27, 2022, Ms. Caswell Johnson sent to Ms. Hartman copies of the executed revocations as to Michelle Hartman and Ernesto Cruz, as well as the Proposed Ward’s appointments of Ms. Caswell-Johnson as

agent under Statutory Durable and Medical Powers of Attorney.

14. Ms. Caswell-Johnson's affidavit additionally relates that on January 28, 2022, she and Ms. Turner along with the Proposed Ward, all appeared at Ms. Norman's office for two meetings:

- a. A meeting with the Houston Police Department Missing Persons Unit, to whom Michelle Hartman made a false claim that Proposed Ward was missing, despite the fact that Ms. Hartman knew from January 24, 2022, forward, where and with whom Proposed Ward was located; and
- b. A meeting with Proposed Ward's brother, Ernest Cruz, who had not visited Proposed Ward in many years, according to Proposed Ward.

15. As set out in the Affidavits of Ms. Caswell-Johnson and Ms. Turner, during that meeting, Proposed Ward's brother and his son, Proposed Ward's nephew, both shed a few tears at the meeting and expressed their love for Proposed Ward. Also present by telephone was Michelle Hartman, who ignored Proposed Ward's statements to her that Proposed Ward wanted her money back and that she wanted nothing to do with Ms. Hartman as being in any control of Proposed Ward's life and finances.

16. As set out in the Affidavits of Ms. Caswell-Johnson and Ms. Turner during the telephone call, Ms. Hartman seemed only to be concerned with both describing Proposed Ward's mental condition—not supported by Dr.

Barrett's Report— and more urgently, finding out the location of the Trustee of Proposed Ward's Revocable Living Trust, who Ms. Hartman described as a "federal judge in Austin." (Actually, the Hon. John Devine, now an Associate Justice of the Texas Supreme Court, was appointed in November 2007 by Proposed Ward and her now-deceased husband to be the successor Trustee of "The Trust.")

17. On January 29, 2022, after the January 28 meeting in which Proposed Ward's brother and his son reassured Proposed Ward of their love for her, Proposed Ward requested to go to her brother's home for a visit and Ms. Caswell-Johnson called Proposed Ward's brother, Ernest Cruz. Mr. Cruz assured Proposed Ward and Ms. Caswell-Johnson that he had four bedrooms in his home; that Proposed Ward could come stay with him. Ernest Cruz promised that Proposed Ward could speak to her friends at any and all times, and her friends could visit her. He also agreed he would hire help for Proposed Ward.

18. As of the filing of this Application, Applicant and the long-time close friends of Proposed Ward, as set out in their affidavits, have been unable to reach Proposed Ward since late January, 2022.

19. On February 8, 2022, Genesis Luna, the daughter of Applicant and a close friend of Proposed Ward who lived in Proposed Ward's home, attempted to reach Proposed Ward by calling Proposed Ward's brother. After becoming aware in February of the concerns about Elvie from Applicant and Elvie's other friends. See Exhibit J.

20. On February 17, 2022, Proposed Ward's brother, stated to Applicant that Proposed Ward was in a [psychiatric] hospital in San Antonio, but that:

“... She [Proposed Ward] will be moved to a psychiatric place in Seguin at any moment; waiting for confirmation, the hospital will make the transfer. . . she will be in a place where they take care of people like her. **Everyone will be able to see her there.**”

21. On February 21, 2022, Applicant again spoke to Proposed Ward's brother and requested to know Proposed Ward's location so she could visit Proposed Ward. Ernest Cruz' response was that: "They just moved her [Elvie] Friday . . . to Columbus in Seguin." When Applicant asked when she could come see Elvie, he said, "I don't know nothin' . . get with Michelle [Proposed Ward's niece]."

22. As shown in Exhibits A and B, Michelle Hartman, kept Proposed Ward from being visited in psychiatric facilities between November 2021 and January 2022, essentially "locking down" Proposed Ward.

23. Since Applicant's February 17, 2022, conversation with Ernest Cruz, **Applicant has reason to believe that Michelle Hartman has, yet again, used her revoked Powers of Attorney to place Proposed Ward in an in-patient psychiatric facility, limiting both access to Proposed Ward and precluding Proposed Ward's exit from the facility— essentially committing Proposed Ward to the psychiatric facility — an action that even a temporary guardian appointed by the Court is precluded from doing.**

24. As shown in the affidavits of Ms. Caswell-Johnson and Ms. Turner, as a result of the actions of Michelle Hartman, between November 2021 and March 2022, the Proposed Ward's physical and mental condition has deteriorated.

25. It is believed that Ms. Hartman has been and may be exploiting Proposed Ward financially by seeking additional access to Proposed Ward's funds, and may, at the same time, be failing to provide adequate medical care for Proposed Ward, **an exploiting Proposed Ward's attempts to remove herself from the "locked down" conditions by portraying Proposed Ward as "dangerous."** Proposed Ward is believed to be in immediate need of a guardian of the person and a temporary guardian of the estate.

26. A temporary guardianship of Proposed Ward's person, and appointment of a third-party temporary guardian of the Proposed Ward's estate are sought.

27. The Court has jurisdiction and venue over these proceedings pursuant to Section 1023.001 of the Estates Code because Proposed Ward's permanent residence is Harris County, Texas, and she has not been out of Harris County for over six months. As of March, 15, 2022, Proposed Ward is believed to be currently located in Guadalupe County, Texas, in a psychiatric facility— Guadalupe Valley Nursing Center, 1210 Eastwood Dr., Seguin, Texas 78155.

## II. Specific Facts Necessitating Temporary Guardianship

28. The specific facts which require the immediate appointment of a temporary guardian of the person of the Proposed Ward, and a third-party, temporary guardian of the estate of the Proposed Ward—temporary, since there are alternatives and supports and services available to Proposed Ward's Estate— are set out above and in the Exhibits attached hereto.

29. Proposed Ward's current mental capacity is more fully set forth in the *Physician's Certificate of Medical Examination* of Phillip Barrett, M.D., dated February 3, 2022. See Exhibit I. According to Dr. Barrett, Proposed Ward is **incapacitated with moderate dementia, yet retains capacity**

to designate who she does not want to have any control over her person and finances, and it is his opinion that Proposed Ward's desires regarding her residence should be considered. Exhibit I, P 4.

30. Proposed Ward's physical medical records are currently being held by Proposed Ward's niece, Ms. Hartman, pursuant to Ms. Hartman's statements to Ms. Caswell-Johnson and Ms. Turner on January 28, 2022. Based on information from Proposed Ward's prior "care"—or lack thereof—authorized by Michelle Hartman, Applicant believes Proposed Ward's vision loss due to glaucoma was accelerated via denial of access to necessary medication. Also based on information from Ms. Caswell-Johnson, Applicant believes Proposed Ward's currently moderate dementia will continue to worsen, in part as a result of unnecessary and dangerous psychiatric medications, such as Haldol, with strong side effects, not suited for elderly patients, authorized by Michelle Hartman to be given to Proposed Ward. A developmental disability is not the basis of the physician's diagnosis of incapacity.

31. Between November 2021 and January 24, 2022, using now-revoked powers of attorney, Proposed Ward's niece, Michelle Hartman, is believed to have authorized the use on Proposed Ward, of Haloperidol— Haldol—a psychiatric medication specifically contraindicated for use on an elderly person such as Proposed Ward.



32. Michelle Hartman, has refused to acknowledge the Proposed Ward's revocations of any prior appointments of Michelle Hartman under any financial and/or medical powers of attorney. Applicant has reason to believe that despite having been provided with copies of the Revocations of all Powers of Attorney, Michelle Hartman, using Proposed Ward's funds, has continued to use the revoked Powers of Attorney, including to "lock down" Proposed Ward in a psychiatric unit in Seguin, Texas; to sequester and isolate Proposed Ward from any person other than those approved by Michelle Hartman.

33. **Further, Proposed Ward's independent financial means are not limited**, being available for her use in "The Trust" referenced at ¶¶ 38–40, and Exhibits J, K, and L, but Proposed Ward's independent financial means are susceptible to being used by Michelle Hartman, whom Proposed Ward has precluded from any control over her person and over her estate.

34. Further, there is great concern that Proposed Ward's current living arrangements—placed in Guadalupe Valley Nursing Center, 1210 Eastwood Dr., Seguin, Texas 78155, in a psychiatric unit in Seguin, Texas—are not sufficient for the proper care of the Proposed Ward, particularly given her level of **only moderate dementia**, as well as the Proposed Ward's independent financial means available to Proposed Ward for her proper care.

35. Based upon the facts alleged above, there exists an imminent danger and an immediate necessity for Proposed Ward to have a temporary guardian of her person authorized by this Court to provide Proposed Ward with proper medical care, to properly manage her medication, and to provide her a proper level and quality of care— including not isolating Proposed Ward in a psychiatric facility. The facts alleged above, and hereinafter below, also demonstrate that there exists the need for the immediate appointment of a third-party fiduciary, temporary guardian of Proposed Ward's estate to protect Proposed Ward from financial abuse.

36. Applicant requests that Applicant or a suitable person be appointed as Temporary Guardian of the Person and a third-party fiduciary be appointed as Temporary Guardian of the Estate of Proposed Ward.

37. As of the date of the filing of this Application, no guardianship for Proposed Ward currently exists in this or any other state.

38. The temporary guardian of the person should be granted the following powers:

- a. The power to immediately take control of the person of Proposed Ward from any facility in which she has been placed, including having physical possession of Proposed Ward, and to establish Ward's legal domicile and place of residence.

- b. The power to apply for, arrange for, and consent to any and all medical, psychological, or psychiatric examinations, treatment, tests or evaluations for Proposed Ward, **but not the power or authority to consent to in-patient psychiatric commitment of Proposed Ward.**
- c. The power to apply for, consent to, and arrange for, 24-hour care in Proposed Ward's home, considering Proposed Ward's preference and that her independent financial means will easily allow for top-level, in-home care and/or, if necessary, to enroll Proposed Ward in private or public residential care facilities, including 24-hour facilities or nursing home facilities.
- d. The power to obtain Proposed Ward's Texas Driver's License, social security card, and insurance card(s) from Michelle Hartman, or any other person who holds same; and apply for, and to secure an identification card, social security card, or other identification documents for Proposed Ward.
- e. The power to apply for, receive and manage funds from all governmental sources, including monthly social security income.
- f. The power to consent to or object to medical and dental treatment for Proposed Ward, including surgery.
- g. The power to have access to any and all of Proposed Ward's medical records, health records, and protected health information, **specifically from Michelle Hartman, Proposed Ward's niece**; from any and all covered entities pursuant to 45 C.F.R. 160-1 64 Health Insurance Portability and Accountability Act (HIPAA). This power and authority applies to any and all information governed by HIP AA and should be complied with by any and all health-care providers and insurance companies that have provided treatment, testing or services. "Protected Health Information" regarding Ward's records is to be given the most

liberal interpretation by Ward's health care providers and is to include any and everything regarding Proposed Ward's health condition. This authority allows the Guardian to request and obtain copies of any of the protected health information, including any chemical dependency records, AIDS/HIV testing, results or treatment, and all other treatment, testing, or records that the Guardian deems necessary. This authority shall supersede any prior agreements that Ward may have executed with Ward's providers regarding access or disclosure or lack thereof of Ward's protected health information. This authorization only expires upon a written revocation by this Court delivered to the health care provider;

- h. The power and right to determine who may and who may not visit Proposed Ward, and to deny access to Ward to anyone whose visits are not in the Proposed Ward's best interest as determined by the temporary guardian.

**II. A Temporary Guardian of Proposed Ward's Estate is Necessary to Implement the Alternatives and Supports and Services Already in Existence in Lieu of Permanent Guardianship of Proposed Ward's Estate**

39. In 2001, Proposed Ward and her now-deceased husband provided for certain supports and services as an alternative to guardianship—of, at least, each of their estates—by executing the *John Lewis Kingston and Elvie Lou Kingston Revocable Living Trust*, originally executed on July 17, 2001 (“The Trust”). John Lewis Kingston and Elvie Lou Kingston later twice amended “The Trust” on March 11, 2003, and on November 16, 2007

- a. On March 11, 2003, Proposed Ward and her husband, as Co-Trustees, amended Article I of “The Trust” as to character of property, and Article VII as to necessary signatures regarding stock transactions. See Exhibit K.
- b. On November 16, 2007, Proposed Ward and her husband, as Co-Trustees, amended Section 8.02 in Article VIII of “The Trust,” to state that upon the death of either of the original co-Trustee spouses, the other spouse “shall serve as sole Trustee.” John Lewis Kingston died on December 22, 2010, and Proposed Ward has been serving as sole Trustee of “The Trust” after her husband’s death, see Exhibit L.

40. The November 16, 2007, amendment, Section 8.02 in Article VIII of “The Trust” states that, should the remaining Trustee “. . . die, resign, or become incapacitated,” the Co-Trustees appointed the Hon. John Devine, now an Associate Justice of the Texas Supreme Court, as successor Trustee.

41. As the result of the death of original co-Trustee, John Lewis Kingston, Proposed Ward is now the Sole Trustee of “The Trust,” and has been determined to be partially incapacitated—with moderate dementia, as found by Dr. Phillip Barrett, Exhibit I, *supra*. Therefore, as set out in Section 8.02 in Article VIII of “The Trust,” it is necessary for the Court to appoint a temporary guardian of the estate to identify, locate, collect, and secure all non-Trust assets of Proposed Ward which exist outside of “The Trust,” and then to ensure that all such non-Trust assets are deposited into “The Trust,” so that the already-existing Alternatives, and Supports and Services may

benefit Proposed Ward as intended over twenty years ago.

42. Although a temporary guardianship is necessary to locate and collect Proposed Ward's non-Trust assets and remove them from control by persons disqualified by Proposed Ward to act on Proposed Ward's behalf, the alternatives and supports and services regarding the Proposed Ward's estate set out above are available to Proposed Ward and are feasible to avoid the need for a permanent guardianship of the Proposed Ward's estate.

43. As one of the supports and services available to the Proposed Ward, Applicant requests that the Court appoint a qualified, third-party fiduciary as temporary guardian of the Proposed Ward's estate to identify, locate, collect, and secure current non-Trust assets, if any, and place them into "The Trust."

44. The temporary guardian of the estate should be granted the following powers:

- a. The power and authority necessary to demand that any person who has knowledge of Proposed Ward's estate, whether Trust or non-Trust assets, to provide the following information to the Temporary Guardian, including and not limited to:
  - i. Information regarding all bank accounts at Wells Fargo, N.A., Amegy Bank, as well as any other financial institution which has account(s) and/or assets in the name of Proposed Ward and/or assets in the name of "The Trust," and to disclose to the temporary guardian of the estate any

other financial accounts in the Proposed Ward's name or in the name of "The Trust," as well as the identification of any property either owned by Proposed Ward or "The Trust."

- b. The persons specifically known to have knowledge of Proposed Ward's financial accounts and other assets are:
  - i. Ernesto Cruz, brother of Proposed Ward, who, on January 28, 2022, assured Proposed Ward, in the company of Ms. Caswell-Johnson and Ms. Taylor that the Proposed Ward "has 31 wells" that he has been operating for the benefit of the Proposed Ward. Mr. Cruz' disqualification to have control of the Proposed Ward's accounts or to be her guardian is set out above in Exhibit A, P. 7, and Exhibits C, D, and F, and
  - ii. Michele Hartman, niece of Proposed Ward, who, on January 28, 2022, declared that she intended to continue acting on Proposed Ward's behalf and was seeking information on Proposed Ward's Trust, despite having all prior powers of attorney revoked, as set out above in Exhibits C, D, and F.
- c. The power and authority necessary to compel Ernesto Cruz to account for any and all financial transactions made on behalf of the Proposed Ward, particularly regarding his management of Proposed Ward's "thirty-one (31) wells" which Ernesto Cruz referenced on January 28, 2022;
- d. The power and authority necessary to compel Michelle Hartman to account for any and all financial transactions made on behalf of the Proposed Ward;

- e. The power and authority necessary to locate, identify, and collect all non-Trust assets of Proposed Ward so as to bring them into “The Trust,” and all Trust assets of Proposed Ward so as to ensure that they are properly able to be administered by the Successor Trustee, as set out in the 2001 Trust.
- f. The power and authority necessary to demand immediate turnover of all of Proposed Ward’s financial records and other documents which are currently in the possession of other persons, including and not limited to: Michelle Hartman and/or Ernesto Cruz, and/or Wells Fargo Bank, N.A., Amegy Bank, and/or Sharon Hemphill, former lawyer of Proposed Ward; and including all legal documents held by the attorney who prepared and/or amended the documents for the *John Lewis Kingston and Elvie Lou Kingston Revocable Living Trust*,
- g. The power and authority necessary to obtain the disclosure of Proposed Ward’s confidential financial, and other, non-medical records from any person and/or entity, including and not limited to those persons and entities named above in ¶ 44 (a--b)(i–ii);
- h. The power to manage Proposed Ward's non-Trust real and personal property, including bank accounts or other deposit or investment accounts, annuities, life insurance policies, and any other non-Trust asset in which Proposed Ward may have an interest until such non-Trust assets are placed into “The Trust;”
- i. The power to have access at any time to any safe deposit box rented by Proposed Ward or in Proposed Ward’s name, to remove part or all of the contents thereof and to surrender said safe deposit box;
- j. The power, with prior permission of the Court, to take any legal action necessary or appropriate to enforce or protect any non-Trust property rights of Proposed Ward to defend, pay,



compromise, settle or adjust any liability for any debt or obligation owed to settle, compromise or release any non-Trust claims held or asserted;

- k. The power, with prior permission of the Court, to sell, exchange or otherwise dispose of non-Trust property of Proposed Ward.
- l. The power to manage, maintain, repair or insure non-Trust property, real, personal, or mixed, tangible or intangible, or any interest therein owned by Proposed Ward.
- m. The power to apply for a certificate of title upon, and endorse and transfer title to, any automobile or other motor vehicle of Proposed Ward, and to represent in such transfer assignment that the title to said motor vehicle is free and clear of all liens and encumbrances except those specifically set forth in such transfer assignment.
- n. The power, with prior permission of the court, to maintain or purchase policies of insurance insuring the life, health, property or interests of Proposed Ward (and including Medicare, Social Security or any other private or public welfare program) and with regard to such policies, to take such action as may be appropriate to obtain possession and control of such policies or to collect the proceeds of such policies for deposit into "The Trust."
- o. The power to cause to be prepared, to execute and to file, any tax return, claim for refund or other document which must or should be filed or to pay any tax (including penalties or interest) shown to be due by such return, to represent Proposed Ward before any taxing authority, in any matter, with authority to execute a waiver of any type, to consent to extensions of any type on behalf of Proposed Ward, to compromise or settle any tax liability asserted against Proposed Ward, to make any return or report for Proposed Ward to any governmental agency or authority

which Ward may be entitled or required to make.

- p. The power to execute all documents needed to facilitate employment of necessary professionals; and
- q. The power to do such other and further acts concerning the Proposed Ward and the non-Trust property and interests of the Proposed Ward and the Proposed Ward's non-Trust estate as the Court may from time to time direct by express authorization through written order.

45. Once the temporary guardian of the estate renders the final accounting to the Court of all non-Trust assets located and then deposited into “The Trust,” and the Court approves such final accounting, the Applicant requests that such temporary guardian of the estate be permitted to resign, as the need for a temporary guardian of the estate will end.

46. Applicant brings this Application in good faith and for just cause and requests that her attorneys' fees and expenses relating to this Application and the appointment of a guardian be approved and paid out of the Proposed Ward's guardianship estate.

### **III. Application for Appointment of Permanent Guardian of the Person, Only**

47. Applicant adopts and incorporates for all purposes ¶¶ 1–46, *supra*, as applicable to this Application for Permanent Guardian of the Person, Only, and would further show that, as set out above in ¶¶ 1–46, once any

temporary guardian of the estate renders a final accounting to the Court of all non-Trust assets located and then deposited into “The Trust,” and the Court approves such final accounting, there will be no need for a permanent guardian of the Estate of the Proposed Ward.

48. **Proposed Incapacitated Person.** Elvie Lou Cruz Kingston (“Proposed Ward”), the person for whom the appointment of a temporary guardian is sought, is a seventy-seven (77) year-old, adult female whose date of birth is March 10, 1945, and whose driver's license number is unknown. Proposed Ward is an incapacitated person as defined in Section 1002.017(2), of the Estates Code—moderate dementia. Proposed Ward’s permanent residential address is 7514 Moreton Court, Spring, Harris County, Texas. As of the filing of this Application, it is believed that Proposed Ward may be served with process at the Guadalupe Valley Nursing Center, 1210 Eastwood Dr., Seguin, Texas 78155, and if that information is determined to be incorrect, then Michelle Hartman, niece of Proposed Ward, should be ordered to disclose Proposed Ward’s whereabouts.

49. **Applicant.** Applicant is a long-time, close friend of Proposed Ward and is a person interested in the welfare of the Proposed Ward. Applicant's address is as follows: Nubia Devine, 12208 Montana Springs Drive, Marble Falls, 78654, Travis County, Texas. Applicant would show that it would be

in Proposed Ward's best interest that Applicant or a suitable person be appointed Guardian of the Person.

50. **Venue.** This Court has venue over these proceedings because the Proposed Ward's permanent address is in Harris County, Texas, or the principal estate of the Proposed Ward is located in Harris County, Texas.

51. **Alternatives to Guardianship of Person - None.** As of the date of filing, alternatives to guardianship and available supports and services to **avoid guardianship of the person, only**, were considered by Applicant.

After due consideration of all alternatives to guardianship of the person and available supports and services it was determined that only guardianship of the person is necessary and no supports and services and none are feasible or would avoid the need for a guardianship **of the person.**

52. **Alternatives to Guardianship of Estate Exist.** As of the date of filing of this Application, **there are viable, pre-established alternatives to permanent guardianship of estate** and available supports and services to avoid permanent guardianship of the estate were considered by Applicant.

53. As set out above in ¶¶ 1-46, above, and after due consideration of all alternatives to guardianship of the estate and available supports and services, it was determined that the **alternatives to permanent**

guardianship of the estate do exist and permanent guardianship of the estate is unnecessary, because the “The Trust” established in 2001 by Proposed Ward and her [now-deceased] husband constitutes the supports and services which are feasible and would avoid the need for a permanent guardianship of the estate,

54. **Citation and Notice.** The name, addresses and relationships of those persons required to be served by personal citation pursuant to Section 1051.103 of the Texas Estates Code, to the best of the applicant's knowledge, are as follows:

	<u>Name</u>	<u>Relationship to Propose Ward</u>
a.	Elvie Lou Cruz Kingston Guadalupe Valley Nursing Center 1210 Eastwood Dr., Seguin, Texas 78155	Proposed Ward
b.	Deceased	Parents
c.	Deceased	Spouse
d.	None	Children

55. The name, addresses and relationships of those persons required to be given notice of this proceeding pursuant to Section 1051.104 of the Texas Estates Code, to the best of the applicant's knowledge, are as follows:

	<u>Name</u>	<u>Relationship to Propose Ward</u>
a.	Ernesto Cruz, 14351 Hwy. 80, Karnes City, Texas 78118;	Adult sibling
b.	Michele Hartman, 0417 W. 172 <sup>nd</sup> , Overland Park, KS 66221;	Adult niece
c.	Ernest Anthony Cruz 316 W. Dailey St. Kenedy, Texas 78110	Adult nephew
d.	Sally Garcia 135 Lakeshore Dr. Corpus Christi, Texas 78413	Adult cousin
e.	William Sanchez 135 Lakeshore Dr. Corpus Christi, Texas 78413	Adult cousin
f.	Guadalupe Valley Nursing Center 1210 Eastwood Dr., Seguin, Texas 78155	Administrator/Operator Residential Facility
g.	Jonna Caswell-Johnson 26645 Bayou Tesch, Magnolia, Texas 77354	Person Appointed Agent in Powers of Attorney

56. The name, addresses and relationships of those persons required to be listed in the application but not required to be served pursuant to Section II 01.00 I (b)( 13)(0) of the Texas Estates Code, to the best of the applicant's

knowledge, are as follows:

- |     |                                |
|-----|--------------------------------|
| N/A | Minor Child of Proposed Ward   |
| N/A | Minor Sibling of Proposed Ward |

57. **Estate.** It appears that Proposed Ward may have personal property valued as follows:

- |      |  |                       |
|------|--|-----------------------|
| a.   | Various bank accounts (approximately)  | \$2,000,000.00        |
| b.   | Assets of the <i>John Lewis Kingston and Elvie Lou Kingston Revocable Living Trust</i> |                       |
| i.   | Real Property in the Trust<br>7514 Moreton Court,<br>Spring, Texas, See Exhibit L;     | \$ 451,000.00         |
| ii.  | Personal, tangible property<br>located in the real property                            | \$ Unknown            |
| iii. | Trust Checking Account   | \$ 973,000.00         |
|      | <b>Total known Trust Assets</b>  | <b>\$1,424,000.00</b> |
| c.   | Older Ram pickup truck   | \$ Unknown            |
| d.   | Personal Income  | \$ Unknown            |

58. **Other Guardianships / Powers of Attorney.** To the best of Applicant's knowledge and belief as of the filing of this Application, there are no guardianships existing or pending of any kind for the Proposed Ward in the State of Texas or any other state. Proposed Ward has executed Statutory

Durable and Medical Powers of Attorney appointing Jonna Caswell-Johnson as her primary agent, attached *supra* as Exhibits E and G.

59. **Proposed Guardian of the Person.** Applicant requests that the Court appoint Applicant or an eligible and suitable person to serve as Guardian of the person of the Proposed Ward, Applicant is eligible, suitable and not disqualified by law to serve as guardian of the person.

60. **Duration of Guardianship of the Person.** Applicant requests the Guardianship of the Person be granted for an indefinite term. The term of this guardianship shall be until the Ward is restored to full capacity, dies, or until the court determines this matter shall be terminated.

61. **Nature Of Incapacity.** Proposed Ward's current medical condition is more fully set forth in the Physician's Certificate of Medical Examination of Phillip Barrett, M.D., dated February 3, 2022, a copy of which is attached hereto as Exhibit I, *supra*. According to Dr. Barrett, Proposed Ward is mentally incapacitated due to **moderate dementia, although retaining sufficient capacity to have determined whom Proposed Ward adamantly refuses to have control over her person or finances, as more fully set out above in ¶ 28, *supra*, and in Exhibits A – I.** A developmental disability is not the basis of the physician's diagnosis of incapacity.



62. Further, there is great concern that Proposed Ward's current living arrangements are not sufficient for the proper care of the Proposed Ward, and are, in fact,, detrimental to the Proposed Ward's physical and mental health, given Proposed Ward's level of only moderate dementia, as well as the independent financial means available to Proposed Ward for proper care needed by Proposed Ward. Applicant has good reason to believe Michelle Hartman, Proposed Ward's niece, "locked down" Proposed Ward in a psychiatric facility by effectively consenting to in-patient psychiatric commitment of Proposed Ward at Guadalupe Valley Nursing Center, 1210 Eastwood Dr., Seguin, Texas 78155.

63. Based upon the facts alleged above, there exists an imminent danger and an immediate necessity for Proposed Ward to have a temporary guardian of her person to provide her with proper medical care, to properly manage her medication, and to provide her a proper level and quality of care, **including not consenting to in-patient psychiatric commitment of Proposed Ward in a psychiatric facility**, as well as appointing a third-party fiduciary temporary guardian of her estate appointed to protect Proposed Ward from financial abuse.

64. The Proposed Ward is impaired in her ability to personally initiate, handle, or make decisions concerning her physical and mental health or to manage complex financial affairs due to her condition, although Dr. Barrett's Report, Exhibit I, *supra*, states that the Proposed Ward **retains capacity to designate who she does not want to have any control over her person and finances**. It is Dr. Barrett's opinion that Proposed Ward's desires regarding her residence should be considered. The Proposed Ward does not have capacity to vote in a public election or be eligible to hold or obtain a license to operate a motor vehicle. Therefore, Applicant requests the appointment of a guardian of the person and the granting of the requested powers listed below.

65. **Specific Areas Of Protection And Assistance Requested .**

Applicant requests that the proposed guardian of the person have authority as follows (Elvie Lou Cruz Kingston is referred to as the "Ward" for the purposes of these powers) as Guardian of the Person—full authority, including, but not limited to, the following rights and powers:

- a. The power to review, to take possession of, and to consent to the disclosure of the Ward's medical, dental and healthcare records.
- b.

- c. The power to apply for, arrange for, and consent to any and all psychological, psychiatric, medical, or healthcare examinations, tests, treatments, or evaluations for the Ward, but not the power to consent to in-patient psychiatric commitment of the Ward.
- d. The power to consent to or object to medical, dental and health care treatment for the Ward, including, but not limited to surgery, but not the power or authority to consent to a sterilization or abortion for the Ward.
- e. The power to make the final decision, after consultation with the Ward, regarding the Ward's residence, including the power to consent to, and arrange for, 24-hour care in Ward's home, considering Ward's preference and that Ward's independent financial means will easily allow for top-level, in-home care and/or, as necessary, to enroll Ward in private or public residential care facilities, including 24-hour facilities or nursing home facilities.
- f. The power to obtain Ward's Texas Driver's License from Michelle Hartman, or any other person who holds same; and apply for, and to secure an identification card, social security card, or other identification documents for Ward.
- g. The power to apply for, consent to, and to enroll the Ward in appropriate educational, vocational and recreational services.
- h. The power to apply for, receive and manage funds from governmental sources, including monthly social security income, including, but not limited to, Social Security, Social Security Disability, Medicare, Supplemental Security Income benefits, Medicaid, HUD Section 8 rent subsidies and Veteran's benefits;
- i. The power to make application for payment from the Ward's Trust for expenses necessary to maintain the Ward in the manner which her prior lifestyle and her independent financial

status permit, including clothing, recreational activities, memberships in private or social clubs; means to the Trustee of the Ward.

- j. The power to apply for and to consent to governmental services on the Ward's behalf, including, but not limited to, food stamps, Medicaid and vocational rehabilitation programs.
- k. The power to consent to the administration of psychoactive medications for the benefit of the Ward.
- l. The power to transport the Ward to an inpatient mental health facility and file for emergency detention.

66. Because of the alternatives which exist to permanent guardianship of the Ward's estate as set out in "The Trust" shown in Exhibits K, L, and M, and ¶¶ 39–43, *supra*, there is no need for the appointment of a permanent guardian of the Ward's estate.

67. **Limitation Of Rights To Be Included In Court's Order.**

Applicant requests that the Proposed Ward's rights be limited as follows:

- a. Elvie Lou Cruz Kingston shall no longer have the right to operate a motor vehicle or hold or obtain a license to operate a motor vehicle under Chapter 521 of the Transportation Code.
- b. Elvie Lou Cruz Kingston shall no longer have the right to vote in a public or private election.
- c. Elvie Lou Cruz Kingston shall no longer have the right to make decisions involving her marital status.

- d. Elvie Lou Cruz Kingston shall no longer have the right to make decisions or give consent concerning her medical, dental and healthcare treatment, tests, examinations or evaluations.
- e. Elvie Lou Cruz Kingston shall no longer have the right to make gifts of real or personal property.
- f. Elvie Lou Cruz Kingston shall no longer have the right to execute a power of attorney.
- g. Elvie Lou Cruz Kingston shall no longer have the right to purchase, use, own, or possess firearms.
- h. Elvie Lou Cruz Kingston shall no longer have the right to enter into contracts.
- i. Elvie Lou Cruz Kingston shall no longer have the right to make decisions regarding her residence which decisions would override the ultimate decision of the guardian of the person.
- j. Elvie Lou Cruz Kingston shall no longer have the right to personally seek employment, obtain government assistance or access government benefits or funds.
- k. Elvie Lou Cruz Kingston shall no longer have the right to exercise the powers and authority over her person that are given to the guardian of the person, other than as relates to her input into decisions regarding her residence, subject to the ultimate decision of the guardian of the person.

68. WHEREFORE, Applicant prays that notice of this Application be given as required by law and that the Court:

- a. Appoint Applicant or a suitable person as Temporary Guardian of the Person;

- b. Appoint a suitable third-party fiduciary as Temporary Guardian of the Estate of Proposed Ward, with all of the duties and powers set forth herein until the Temporary Guardian of the Estate has completed the identification and collection of the Trust and non-Trust assets of the Proposed Ward and completed the deposit of such non-Trust assets into the Trust with a final accounting accepted by the Court, so that such Temporary Guardian of the Estate may be released;
- c. Appoint Applicant or a suitable person to serve as Guardian of the Person of Proposed Ward with all of the duties and powers as set forth herein; and
- d. Order such further relief as the Court may deem appropriate.<sup>1</sup>

Respectfully submitted,

/s/ Susan C. Norman

Susan C. Norman

State Bar No. 15083020

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Houston, Texas 77255-5585

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SueNorman@SueNormanLaw.com

Attorney for Applicant

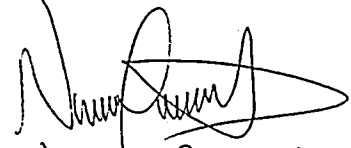
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<sup>1</sup> All exhibits referenced herein are attached and incorporated for all purposes as if fully set forth verbatim herein.

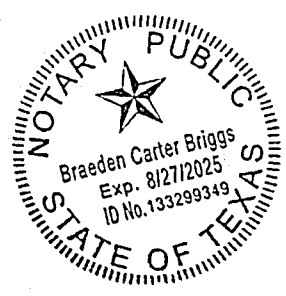
STATE OF TEXAS      3-15-22  
   §  
   §  
COUNTY OF TRAVIS      §  
   §

BEFORE ME, the undersigned authority, on this day personally appeared Nubia Devine, Applicant in the foregoing Application for Appointment of Temporary and Permanent Guardians of the Person, and Application for Appointment of Temporary Guardian of the Estate, and known to me to be the person whose name is subscribed to the above and foregoing Application, and stated under oath that such Application contains a correct and complete statement of the facts and matters to which it relates, including the Affidavits and Exhibits attached hereto and incorporated for all purposes as if fully set forth verbatim herein, and all the contents thereof are true, complete and correct to the best of Applicant's knowledge.

SWORN AND SUBSCRIBED TO BEFORE ME on this 15<sup>th</sup> day of March, 2022.

  
Nubia Devine

  
Notary Public, State of Texas



AFFIDAVIT OF JONNA CASWELL-JOHNSON

STATE OF TEXAS §

COUNTY OF HARRIS §

Before me, the undersigned authority, personally appeared, Jonna Caswell-Johnson, who upon being duly sworn by me, upon her oath did depose and testify as follows:

“My name is Jonna Caswell-Johnson. I am a witness in this case for the *Application for Emergency Appointment of Temporary Guardian of Person and Estate* of Elvie Lou Cruz Kingston. I am over the age of eighteen, fully competent, and able to make this affidavit. All statements herein are made from my personal knowledge and are true and correct.

1. “I have known Elvie Kingston since the mid-1990s, when my now-husband and Elvie’s husband, John (now deceased), were in business together, and Elvie and I have been close friends for almost thirty years. I have spent a great deal of time with Elvie during that time, to the extent that I have recently learned in January, 2022, that Elvie appointed my husband and me as contingent beneficiaries of her Will according to her First Codicil, executed in 2007.

2. “In November, 2021, I was unable to get in touch with Elvie Lou Cruz Kingston (hereinafter sometimes “Elvie”), my very close friend for almost thirty (30) years. I reached out to our mutual friend, Norma Jeter—who has also been a close friend of Elvie’s for many years—to ask if she knew where Elvie was. Norma advised me to contact Michelle Hartman, Elvie’s niece in Kansas, to get information on Elvie.

3. “Michelle told me that Elvie had become ill and was taken to the hospital and confirmed to have COVID. I requested Michelle to please let me know when I could see or speak with Elvie.



EXHIBIT A

4. "I kept in touch with Michelle and finally did get to speak to Elvie. I believe it was at the very beginning of December that I found she was at a place called Oceans Behavioral Hospital in Katy, Texas.

5. "When I spoke with Elvie at Oceans she was crying uncontrollably and said she didn't understand why she was there. She begged me to come pick her up. She also said that two men had hurt her; that one had put his hand around her throat and threw her on the bed and another pulled her pony tail.

6. Elvie is a very small, petite woman who can easily be physically overpowered. I immediately called Michelle in Kansas and demanded she contact Oceans about Elvie's statements and Elvie's being hysterical. When Michelle called me back she said none of that had happened and that the nurse did a face time and Elvie was sleeping and no marks on her body.

7. "I found it strange and very disturbing that Michelle in Kansas did not suggest that I go to Oceans and physically verify that Elvie was not being abused, and, instead, just took the word of the facility. I was local and could have checked to ensure Elvie's proper treatment and that she was not being abused.

8. "I was very concerned at Elvie's statements and the fact that she may have been assaulted, and that Michelle seemed to totally discount Elvie's report to me. I sent a member of the clergy, Dr Jana Needham, from a church my family started years ago, to see Elvie at Oceans. Dr. Needham advised me that she was not able to talk to Elvie because Oceans' staff instructed her not to wake Elvie, so she left a prayer cloth and a note on a table next to the bed.

9. "I was able to contact Elvie at Oceans the next day by phone and asked her if she could see the prayer cloth and note. She said no. Elvie then said "that man" (who I assume was an Oceans' employee) was there again and I asked her to hand the phone to him. I asked him if there was a prayer cloth and note next to Elvie's bed. He said there was no cloth but there was a

note. I asked he please put the note in her hand. He said "OK," and disconnected the phone. I immediately called back a few times and the number would not answer.

10. I again reached out to Michelle Hartman—several times—and Michelle told me that Elvie could not see anyone or speak to anyone as it was too upsetting to her. After "the man" disconnected the telephone, I was not able to contact Elvie and I never spoke to her again until I found her on January 20, 2022.

11. "I have been very disturbed since November that Elvie's niece, Michelle Hartman, has isolated Elvie from her friends whom Elvie saw frequently. Elvie has always been a gregarious person, who has many friends with whom she enjoys spending time. Elvie is very Type A, and knows and will tell you what she wants, but she has never been physically aggressive or violent. Elvie's independent financial means afforded her a lifestyle that allowed her to go and do as she wished, with no concerns for cost, generally always with friends such as myself, Norma Jeter, and Kathie Turner.

12. "When I finally found Elvie again on January 20, 2022, she was being held in deplorable conditions, and against her will at Spring Branch Transitional Hospital. I witnessed that Elvie was heavily drugged, in poor physical condition, and was dehydrated. Elvie was dirty, with double diapers which were soiled, as were the clothes in which I saw her. Elvie said her niece was supposed to be taking care of her, and has not, therefore she stated that she wants nothing to do with her niece as she doesn't trust her—a statement Elvie had made many times before November 2021.

13. "I returned to Spring Branch Transitional on January 21, 22, and with Norma Jeter on January 24, 2022. Elvie had on the same clothes on January 24, as she had on when I saw her on January 20, with food stains, and she was still double-diapered, filthy and smelly where the diapers were. Finding out that there was no guardianship over Elvie, I signed her out of the facility and she did not return. Elvie stayed either in my home or with her friend, Kathie Turner from January 24 to January 29, 2022.

EXHIBIT A

14. "I had previously spoken to Susan Norman, an attorney, about Elvie's condition, and she agreed to meet with Elvie at her office. Norma and I and Elvie met with Ms. Norman on January 24, 2022, after leaving Spring Branch Transitional. Ms. Norman interviewed Elvie extensively, including about her wishes as to who Elvie trusted to care for her on a daily basis, as well as to whom she wanted to have charge of her financial affairs.

15. "Elvie repeated to Ms. Norman the same positions she had previously stated to me and others of her friends many times prior to November 2021 regarding her care and her finances: that she did not trust her niece and did not want her niece to have any control over her care, including any authority for her medical care, and no control over any of Elvie's financial affairs.

16. "After the extensive meeting in Ms. Norman's office, Ms. Norman prepared several documents in accord with Elvie's wishes, which were notarized by Elvie's long-time friend, Norma Jeter, including:

- a. Revocations of any prior (to January 24, 2022) powers of attorney, whether Statutory Durable or other powers attorney appointing Elvie's niece, Michelle Hartman and/or appointing Elvie's brother, Ernesto "Ernest" Cruz, as Elvie's agent and/or attorney-in-fact;
- b. Revocation of any prior (to January 24, 2022) medical powers of attorney, appointing Elvie's niece, Michelle Hartman and/or appointing Elvie's brother, Ernesto "Ernest" Cruz, as Elvie's agent to act for Elvie in her medical matters; and
- c. Disqualification in a Declaration of Guardian that disqualified Elvie's niece, Michelle Hartman and Elvie's brother, Ernesto "Ernest" Cruz, as well as any child of Ernesto Cruz, from serving as guardian of Elvie's person or estate.

17. “At the same time, on January 24, 2022, Elvie executed before Norma Jeter, who notarized Elvie’s signature on:

- a. a Statutory Durable Power of Attorney, which designated me and another friend, Kristin Cobb, as Elvie’s attorneys-in-fact;
- b. a Medical Power of Attorney which designated me and Kristin Cobb to act for Elvie in medical matters; and
- c. a HIPAA Release in which Elvie designated me and Kristin Cobb to receive Elvie’s HIPAA Private Medical Information. In the HIPAA Release, Elvie specifically disqualified her niece, Michelle Hartman and Elvie’s brother, Ernesto “Ernest” Cruz from receiving any private medical information covered by HIPAA.

18. “On January 25, 2022, Elvie and I and Norma returned to Ms. Norman’s office. At that time, Ms. Norman asked Elvie if she would be willing to speak with a psychiatrist, Richard Barrett, M.D., who would interview her so he could issue a report regarding her condition. Elvie agreed and an appointment was set for the next morning, January 26, 2022. Ms. Norman further spoke with Elvie whether Elvie’s position regarding her niece and brother was the same as the day before. Elvie reaffirmed that she wanted her niece, her brother, and his children to have nothing to do with controlling her life and her finances.

19. “On January 25, 2022, I notified Michelle Hartman by text message to her cell phone that her powers of attorney had been revoked, and on January 27, 2022, I sent Michelle Hartman a copy of both filed Powers of Attorney, appointing me and Kristin Cobb as Elvie’s agents, as well as sent her the filed Revocations of all her powers of attorney.

20. “On January 26, 2022, Elvie and I returned to Ms. Norman’s office for Elvie’s appointment with Dr. Barrett. I paid my personal funds for Dr. Barrett’s competency evaluation (\$3,000.00), as well as paid Ms. Norman’s fees and expenses to that date (\$4,500.00). After Dr. Barrett completed his interview with Elvie, she and I left.

EXHIBIT A

21. "At all times since January 24, 2022, Michelle Hartman has known that Elvie was with me and was safe.

22. Later on Wednesday, January 26, 2022, while Elvie and I were eating lunch, I received a call from a deputy with the Montgomery County Sheriff's Office telling me that Elvie was a missing person and he was looking for her. I told him that Elvie was eating lunch with me and he asked to speak to her. Elvie spoke to him and invited him to lunch with us. I told him that I would be happy to show him the pictures I took of the abuse Elvie had undergone. His response was, "I'm not getting in the middle of that," and he ended the call.

23. "On January 27, 2022, I received a call from a detective at the Houston Police Department's Missing Persons unit, threatening me with arrest and demanding to see Elvie because she had "been unlawfully removed from a facility."

24. "I immediately called Ms. Norman, who contacted the detective. I heard nothing further from the detective. Ms. Norman advised me that she had made arrangements for the detective to meet with Elvie in Ms. Norman's presence at Kathie Turner's house that afternoon.

25. "Michelle had made arrangements for me to view a high-quality memory care location with Elvie later that afternoon. The detective did not show up for the appointment with Ms. Norman, so I met with Elvie, Norma, Kathie, and Ms. Norman at Auberge on Louetta in Spring.

26. "After the appointment, Elvie left with Kathie Turner from the facility and Ms. Norman said she was returning to her office. I met Elvie and Kathie at a restaurant and took Elvie to eat.

27. "On Friday, Ms. Norman advised me that the HPD detective was coming to her office at 2:00 p.m. to meet with Elvie and Ms. Norman. I brought Elvie to Ms. Norman's office and Kathie Turner met us there. HPD Detective Fort and a fellow officer arrived, met and joked with Elvie, and conducted their missing persons investigation which they concluded by

EXHIBIT A

saying that there was no more for them to do, and left.

28. “Shortly after the HPD detective left, Elvie’s brother (Ernesto Cruz), and her nephew (Antonio Cruz), came into Houston, and met with Elvie, Ms. Norman, with me, and with Kathie Turner at Ms. Norman’s office. At this meeting Elvie advised her family—her brother, nephew, and Michelle, who called in by telephone—that they had stolen from her, and she wanted her things back. I assume Elvie may have been talking about all of her jewelry, furs, and firearms the niece (Michelle) had removed from Elvie’s home while Elvie was locked down in various facilities.

29. “During the meeting the brother, niece, and nephew were the most concerned with where Elvie’s Will was, and with her Living Trust information for which there is a designated successor Trustee, John Devine. Elvie’s brother bragged to her that “she now “has thirty-one (31) wells,” implying that she has an income from “her thirty-one wells.”

30. “Not once did Elvie’s brother, nephew, or niece inquire as to the horror and abuse Elvie had just suffered since November 2021. There was no discussion about what could be done for Elvie going forward to obtain proper care for her which would be consistent with her status in life and her independent financial means. No one mentioned obtaining for Elvie the medical care she needs—including the prescription glaucoma eye drops she was not receiving, which risks vision loss.

31. “The brother stated several times in the meeting that my Powers of Attorney needed to be relinquished, or he would “take it to court.”

32. “The brother and nephew shed a few tears at the meeting, and hugged Elvie, telling her they loved her. Elvie hugged them back and said she loved them, also. After leaving the meeting, that night on January 28, 2022, Elvie said she wanted to talk to her brother because she was touched that he and his son cried and hugged her and they came to see her—as Elvie said it has been decades since she had any visits from him. I called Elvie’s brother for her on my phone.

EXHIBIT A

33. “Elvie’s brother told her that he had four bedrooms, and promised that she could come live with him. The next day Elvie said she would like to go to her brother for a visit, and I spoke with him on the phone and advised him that she still loved him, and was he serious about her living there and he would take care of her?”

34. “Elvie’s brother, Ernest replied, “Yes.” I told him that if he would take proper care of her, and let her live in the house because Elvie doesn’t want to live in a hospital setting—and she has responded so well with love and attention in just a few days with friends, I would decline the appointments under Elvie’s POAs. Elvie’s brother promised that Elvie could speak to her friends at any and all times, and her friends could visit her. He also agreed he would hire help for her.

35. “Elvie’s brother told me he needed to talk to his daughter, Elvie’s niece Michelle, and he would get back with me.

36. “When he called back, he said “you have a deal,” and I could bring Elvie to the ranch. He later called back and said he preferred to meet at Chili’s Restaurant on Interstate 10 near Seguin.

37. “On Sunday, January 30, 2022, when I dropped Elvie off at Chili’s, I asked if he had hired anyone to help take care of her, and he replied he would “in a couple of weeks.”

38. “Since January 30, 2022, I have been unable to talk with Elvie and not been permitted to know where she was so I could visit her. “When I spoke to Ernest on February 3, 2022, he used the past tense when speaking about Elvie, and said they were looking at a place for her “around Seguin so he could see her.”

39. “During the first week of February, Kathie Turner told me that Ernest had advised his and Elvie’s cousin, William Sanchez, that Elvie had gone to San Antonio, and could not be visited.

EXHIBIT A

40. “I called Ernest Cruz February 7, 2022, and left a message, saying that I would like to speak to Elvie, and to please contact me so I may speak to her. As of the date of this Affidavit on February 11, 2022, Ernest has not returned my call. I am very concerned for Elvie.

41. “Elvie was locked down and drugged against her will before, apparently at the direction—or neglect—of her niece in Kansas, and I now believe that Ernesto Cruz’ offer for Elvie to live with him and hire help for Elvie’s benefit, was untruthful. I believe that Elvie may be hurt, or locked in another facility against her will and drugged in order to make her appear to have become totally incapacitated. As of January 25, 2022, she had only moderate dementia, according to Dr. Barrett; she communicated well; knew who she was and who her friends were; and most importantly, knew who she did not want to be in control of her or her finances.

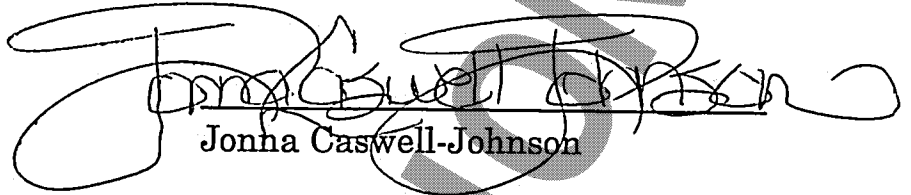
42. “I have never taken money from Elvie, nor permitted her to buy me anything, nor permitted her to pay for anything when she is with me. I have my own independent financial assets and I do not need, and do not want, any of Elvie’s money or assets. I accepted the appointments under Powers of Attorney so that I could assist Elvie in all areas in which she needs assistance because she does not trust her niece, brother, or nephew.

43. “Over the almost thirty years of my close friendship with Elvie, I came to know Elvie’s thoughts on many areas, particularly her thoughts and wishes concerning her desire to remain in control of her life and her concern that no one be permitted to take her assets against her will. Elvie has stated many times to me and to other friends, including Norma Jeter, that she did not trust her niece, Michelle Hartman, who lives in Kansas.

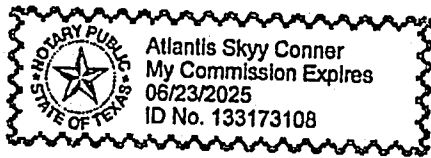
44. “I have never seen any documents giving Michelle Hartman any power of attorney or control over Elvie. Considering Elvie’s prior statements regarding her niece and her brother’s and niece’s primary interest on January 28, 2022, being in Elvie’s Will and her Trust, it would not surprise me to find that any documents of this nature appointing the niece were either forgeries or were secured from Elvie by means of deceit.




Signed on February 12, 2022.

  
Jonna Caswell-Johnson

SUBSCRIBED AND SWORN TO BEFORE ME by the said Jonna Caswell-Johnson on this the 12th day of February, 2022.



  
Notary Public, State of Texas

COPY

ORIGINAL

**AFFIDAVIT OF KATHIE TURNER**

**STATE OF TEXAS** §

**COUNTY OF HARRIS** §

Before me, the undersigned authority, personally appeared, Kathie Turner, who upon being duly sworn by me, upon her oath did depose and testify as follows:

“My name is Kathryn Turner. My date of birth is April 1, 1956, and my address is 14430 Reissen Lane, Houston, Texas 77069. I am a witness in this case for the *Application for Appointment of Temporary Guardian of Person and Estate* of Elvie Lou Cruz Kingston. I am over the age of eighteen, fully competent, and able to make this affidavit. I declare under the penalty of perjury that the following facts are true and correct when I state those of my own knowledge, and to inform myself, I have also relied upon facts I received from other reliable persons, including Elvie Kingston, regarding my close friendship with Elvie Lou Cruz Kingston.

1. “I have known Elvie Lou Cruz Kingston (hereinafter “Elvie”) for over seventeen (17) years. She and I are members of the Texas Tea Party Republican Women’s Club of which Elvie was the president for a number of years. Elvie and I had many interactions related to our shared interests in politics as well as we spent a great deal of time together in leisure activities.

2. Elvie and I traveled together—to Corpus Christi to visit her cousin, Sally Garcia, when we were working for the same skin care company. We both worked for Nerium and Stream Gas and Electric, and routinely held independent representative sales parties at Elvie’s home. Elvie was fun, bossy, engaged, and a good hostess with a lovely home that made her a top choice for that and for political gatherings. She thrived on the activity.

3. I found out that Elvie had been taken to the hospital in November, and then later had been transferred to several mental health facilities. I felt the implications that Elvie was not improving from COVID was being used to keep people away—over time it seemed a farce and I did not trust the information I was getting. I asked Sally Garcia, Elvie's cousin, and she said that NO, I should just go see Elvie. I did not know where Elvie was taken. I was not able to see or speak to Elvie until the week of January 24, 2022, when Jonna Caswell-Johnson rescued her from abusive conditions at a Spring Branch "rehabilitation" center. I have seen the pictures Jonna took and heard Jonna's statements of the very poor condition in which she found Elvie—dirty, drugged, and double-diapered with soiled diapers.

4. Elvie is apparently again isolated by her family and in unfamiliar surroundings. Elvie's isolation seems to have been planned. Elvie had a Verizon cell phone which had all her important contacts—including her friends—programmed into it. Sometime last year Elvie's former lawyer took Elvie to T-Mobile to get a new phone, changing the number, even though the phone was still fine and the old, Verizon phone number was Elvie's lifeline to her only known world.

5. I asked repeatedly why the contacts were not transferred to the new phone, but never received a valid reason to cut Elvie off from all the people she knew and talked to frequently. I personally know the details because I was on the phone trying to help resolve it with Elvie and Verizon for her. Elvie still owed Verizon for the phone so again there was no reason to buy a new one and not pay the existing debt, keep no numbers, and share it with no one but the person involved with the purchase of the new phone.

6. When I heard the Trust discussed on January 28, 2022, that information confirmed what I heard long, long ago: that John Kingston told Sally, Elvie's cousin, that there is nothing to worry about for Elvie's financial security when John passes. He left her very well provided for. I did not know about the specific terms in the paperwork provisions, just that there was a Trust. I have since learned that the Trust has provisions for a

EXHIBIT B

successor Trustee, John Devine, if either spouse died and the remaining spouse became incapacitated or was otherwise unable to serve.

7. Elvie did not like her brother, Ernest Cruz – he owed her money. Elvie always told people she has no family—she disliked her brother that much and they were estranged. Elvie said her brother came around for money and she and her husband trusted and felt sorry for him and then her brother made no attempts to repay the money she and John gave him for a trailer years ago. Elvie's brother was never around Elvie for many years. Elvie was specific and consistent about her brother—did not like him, trust him, or want to have anything to do with him. She loved her cousin Sally and we all had a great time together in years past.

8. Elvie referred to John Devine as her son. He and his family lived in her home for a period of time and Elvie was very close to them. It would be a logical assumption that Elvie and John would make him the Trustee, since he was the closest person with a legal background and a trusted character. I never asked or was told the terminology of the trust.

9. I have known for a long time that Elvie has enough independent financial means, with continuing revenue from a family inheritance which would allow her to live in her own home with twenty-four hour care from a highly-qualified care giver. Elvie's financial means allows her to pay for anything and any level of care to address her needs and desires.

10. My friendship with Elvie spanned any and all topics of current events and circumstances, including needs she had, and at times I played a role in Elvie's life if it made sense to be involved. I visited an attorney with Elvie in Corpus Christi, and at Elvie's request I set up a dinner in Houston with another attorney with oil/gas background when Elvie ran into a problem. I would not have had reason to know or ask at that time, about any personal details of how John or Elvie set up a will/trust.

EXHIBIT B

11. I had agreed to have Elvie as a guest at my home until Jonna and Michelle could sort it all out and we could get a better arrangement set up for Elvie's doctors, needed medical treatment, and a safe environment. Elvie was with me at my house on Thursday, January 27, 2022, when she and I and Ms. Norman waited for the Houston Police Department detective to meet Elvie so as to conduct their Missing Persons investigation as a result of Michelle's making a false claim to law enforcement that Elvie was "missing."

12. The detective never showed up at my home. Jonna asked me to bring Elvie to meet her the Auberge on Louetta Road in Spring to view a facility Michelle had arranged for Jonna to take Elvie to. The interview was an attempt to find a quality residence for Elvie, near her friends and home so she could be social and mobile within her circle of friends and club members.

13. After we finished that meeting at Auberge, Elvie and I and Jonna went to Black Walnut afterwards and Jonna treated us to dinner, Elvie spent the night with me that Thursday night. When she was with me that week, she needed no hands-on help with hygiene and no need to be in diapers. Elvie needed no drugs to change her mood, and she was not combative nor aggressive, just very engaged and happy. Elvie needed friends, conversation, food, and water. Elvie could walk, talk, and sit on a toilet—by herself in the privacy of a bathroom. She never had an accident and when she woke up, she got up and went to the bathroom.

14. Elvie talked at great length about her niece, Michelle Hartman and brother, Ernest Cruz, taking her money and how did this happen? Her niece was supposed to be there to help her and Elvie thought she was. Elvie wanted to trust Michelle with personal matters and then Elvie found herself locked away—scared more than mad- asking what can she do? Who can fix this? Elvie was engaged, happy, and needed no help with hygiene or with dressing/undressing. Elvie expressed her continued intent that Michelle have nothing to do with Elvie's care and particularly with Elvie's finances.

15. Elvie cried when I showed her that night, the pictures of her in the disgusting conditions – the food slop on her tray, the dilapidated bath/shower facilities with holes in the wall, no tank over the toilet, and filth everywhere. Elvie had been drugged and was in soiled diapers. Jonna had bathed her before she brought her to stay with me for a few days.

16. I was with Elvie, Jonna, and Ms. Norman in Ms. Norman's office on Friday, January 28, 2022, prior to and when the Houston Police Department detective came to conduct their Missing Persons investigation originally scheduled for the day before. Elvie was her normal, jocular self, and after speaking with Elvie for a short while, the detectives told me that their investigation was closed, and they left.

17. During the time I was with Elvie in Ms. Norman's office with Jonna, waiting for Elvie's brother and his son to arrive, Elvie expressed clearly, and adamantly, that she wanted nothing to do with her niece—or her brother, who had not visited her in over twenty years. Elvie particularly said multiple times that she did not want Michelle, her niece, to have any control of her life, and her finances, nor did she want her brother to have any control.

18. At the meeting in Ms. Norman's office, Elvie's brother threatened to take Jonna to court if Jonna did not relinquish Elvie's appointment of Jonna in Elvie's Powers of Attorney which Elvie executed on January 24, 2022. Ernest not only threatened to take Jonna to court if she challenged Michelle's power of attorney, he backed it up with boastful comments about his substantial wealth available to fight Jonna in court to prevent her from having/keeping the Powers of Attorney. Elvie's brother's statements were cold, hard-faced, stand-off type of threats.

19. When Michelle called in remotely to the meeting, Michelle had not the slightest interest even to say hello to Elvie or ask how she was. Elvie said it clearly and boldly—both before the meeting and during the meeting, and to Michelle—that she wanted her money and didn't need or want Michelle.

Elvie told Michelle several times that she wanted back everything including the money that Michelle had taken from her.


20. Michelle ignored Elvie as if Elvie were not present, and totally discounted Elvie's execution of the Powers of Attorney Elvie executed on January 24, 2022, and the Revocations of Michelle's Powers of Attorney. From Michelle's statements to the rest of us, it appeared to me that Michelle's main focus was to gain control of Elvie's Trust. Michelle was distressed that she was unable to reach the "Trustee," who Michelle described as "a federal judge in Austin."

21. Elvie's brother and his son told Elvie that they "loved her," and shed some tears; hugged Elvie several times. Elvie hugged them back, and told them that she loved them. The brother and his son left, but not without again threatening to go to court if Jonna did not relinquish the Powers of Attorney.

22. After the meeting at Ms. Norman's office, I went to dinner with Elvie and Jonna and we retrieved Elvie's things at my house, and Jonna took Elvie to Jonna's home. did not speak to Elvie after Friday night, January 28, 2022.

23. To do the right thing for Elvie and to protect her, has taken weeks, and now months of my life and the lives of several of Elvie's friends. Elvie has everything she needs to live very well in this chapter of her life. She has a big legacy with the club she started and good it has done. The "JUST" and simple doctrine of 'Do the right thing'" should be applied to Elvie's care and oversight on her life and health, as well as her financial affairs, as set up many years ago in her Trust.

Signed on March/5, 2022.

  
Kathryn Turner

REVOCATION OF PRIOR ALL MEDICAL POWERS OF ATTORNEY

I, Elvie Cruz Kingston, hereby revoke all prior Medical Powers of Attorney and/or HIPAA Release(s) executed by me prior to January 24, 2022, specifically revoking all Medical Powers of Attorney and/or HIPAA Release(s) executed by me at any time and executed appointing my niece, Michelle Hartmann, daughter of my brother, Ernesto "Ernest" Cruz, as my agent, and designating any other person after Michelle Hartmann, as my alternate agent(s). To the extent any Medical Powers of Attorney and/or HIPAA Release(s) purport(s) to appoint my brother, Ernesto "Ernest" Cruz, as my agent, I revoke any such Power(s) of Attorney executed prior to January 24, 2022, as well.

Signed on January 24, 2022.

*Elvie Cruz Kingston*  
Elvie Cruz Kingston

ACKNOWLEDGMENT

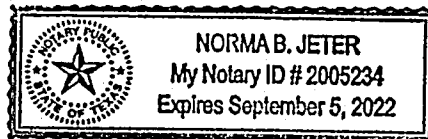
The State of Texas §

County of Harris §

This instrument was acknowledged before me on January 24th, 2022, by Elvie Cruz Kingston.

*Norma B. Jeter*  
Notary Public in and for  
The State of Texas

PREPARED IN THE OFFICE OF:  
AFTER RECORDING RETURN TO:  
Susan C. Norman  
Attorney and Counselor at Law  
P. O. Box 55585, Houston, Texas 77255  
713-882-2066  
SueNorman@SueNormanLaw.com





REVOCATION OF ALL STATUTORY DURABLE POWERS OF ATTORNEY

I, Elvie Cruz Kingston, hereby revoke all prior Statutory Durable Powers of Attorney executed by me prior to January 24, 2022, specifically revoking all Statutory Durable Powers and/or any other Power of Attorney made by me at any time and executed appointing my niece, Michelle Hartmann, daughter of my brother, Ernesto "Ernest" Cruz, as my agent, and designating any other person after Michelle Hartmann, as my alternate agent(s). To the extent any Statutory Durable Power of Attorney and/or other Power of Attorney purports to appoint my brother, Ernesto "Ernest" Cruz, as my agent, I revoke any such Power(s) of Attorney executed prior to January 24, 2022, as well.

Signed on January 24, 2022.

*Elvie Cruz Kingston*  
Elvie Cruz Kingston

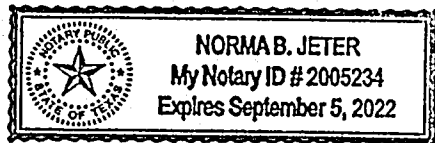
ACKNOWLEDGMENT

The State of Texas §

County of Harris §

This instrument was acknowledged before me on January 24th, 2022, by Elvie Cruz Kingston.

*Norma B. Jeter*  
Notary Public in and for  
The State of Texas



PREPARED IN THE OFFICE OF:  
AFTER RECORDING RETURN TO:  
Susan C. Norman  
Attorney and Counselor at Law  
P. O. Box 55585, Houston, Texas 77255  
713-882-2066  
SueNorman@SueNormanLaw.com

EXHIBIT E

MEDICAL POWER OF ATTORNEY

STATE OF TEXAS                    §  
  §    KNOW ALL MEN BY THESE PRESENTS  
COUNTY OF HARRIS               §

I, Elvie Cruz Kingston, appoint:

Name:       Jonna Caswell-Johnson  
Address:     26645 Bayou Tesch, Magnolia, Texas 77354  
Phone:       832-712=4351

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect immediately.

LIMITATIONS ON THE DECISION MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:

None.

The original of this document is kept with:

Name:       Jonna Caswell-Johnson  
Address:     26645 Bayou Tesch, Magnolia, Texas 77354

The following individual or institution has a signed copy:

Name:       Susan C. Norman  
Address:     P. O. Box 55585, Houston, Texas 77255

DESIGNATION OF ALTERNATE AGENT

If the person designated as my agent is unable, unavailable at the time, or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A.   First Alternate Agent

Name:       Kristin Cobb  
Address:  
Phone:

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

PRIOR DESIGNATIONS REVOKED.

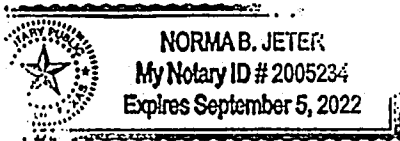
ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

I sign my name to this medical power of attorney on the 24 day of January, 2022, at Houston, Harris County, Texas.

*Elvie L. Kingston*  
Elvie Cruz Kingston

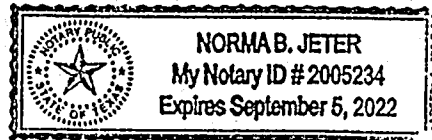
SUBSCRIBED AND SWORN TO BEFORE ME by the said Elvie Cruz Kingston Principal, this the 24<sup>th</sup> day of January, 2022



*Norma B. Jeter*

Notary Public, State of Texas

PREPARED IN THE OFFICE OF:  
Susan C. Norman  
Attorney and Counselor at Law  
P O Box 55585  
Houston, Texas 77255



INFORMATION CONCERNING THE MEDICAL  
POWER OF ATTORNEY

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be eighteen (18) years of age or older or a person under eighteen (18) years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions

EXHIBIT E

made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing, or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified after it is printed and signed. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS:**


- (1) YOU SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC; OR
- (2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.

**THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:**

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;
- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or
- (7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

EXHIBIT E

I certify I have received a copy of this "Information Concerning the Medical Power of Attorney."

  
Elvie Cruz Kingston

COPY UNOFFICIAL

**EXHIBIT F**  
**HIPAA RELEASE**

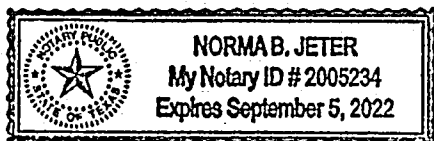
I, Elvie Cruz Kingston, Date of Birth, March 10, 1945, Social Security Number \*\*\*-\*\*-\*\*\*\*, intend for any agent named in this release to be treated as I would be treated with respect to my rights regarding the use and disclosure of my individually identifiable health information and other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. 1320d and 45 C.F.R. 160-164.

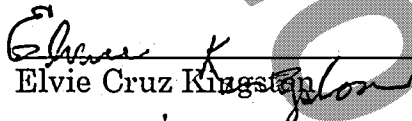
I authorize the disclosure of any information governed by HIPAA to be provided to the following: Jonna Caswell-Johnson and Kristin Cobb.

I specifically disqualify and do not authorize any information governed by HIPAA to be provided to my niece, Michelle Hartman, my brother, Ernesto "Ernest" Cruz, and any child of my brother, Ernesto "Ernest" Cruz.

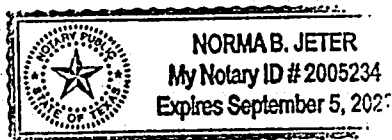
Accordingly, I hereby authorize any physician, health-care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health-care provider, any insurance company and the Medical Information Bureau Inc. or other health-care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to any person and/or agent who is named herein and who is currently serving as such, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse.

This authority given to any named agent shall supersede any prior agreement that I may have made with my health-care providers to restrict access to or disclosure of my individually identifiable health information. The individually identifiable health information and other medical records given, disclosed, or released to any named agent may be subject to re-disclosure by a named agent and may no longer be protected by HIPAA. The authority given to any named agent herein has no expiration date and shall expire only in the event that I revoke this HIPAA Release in writing and deliver it to my health-care provider. There are no exceptions to my right to revoke this HIPAA Release.



  
Elvie Cruz Kingston

SUBSCRIBED AND SWORN TO BEFORE ME by the said Elvie Cruz Kingston, Principal this 24<sup>th</sup> day of January, 2022.



  
Notary Public, State of Texas

EXHIBIT G

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

You should select someone you trust to serve as your agent (attorney-in-fact). Unless you specify otherwise, generally the agent's (attorney-in-fact's) authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent (attorney in fact) resigns or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, Elvie Cruz Kingston, of 7514 Moreton Court, Spring, Texas 77379, appoint Jonna Caswell-Johnson, of 26645 Bayou Tesch, Magnolia, Texas 77354, as my agent (attorney-in-fact) to act for me in any lawful way with respect to all the following powers that I have initialed below.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- Etc* (A) Real property transactions;
- Etc* (B) Tangible personal property transactions;
- Etc* (C) Stock and bond transactions;
- Etc* (D) Commodity and option transactions;
- Etc* (E) Banking and other financial institution transactions;
- Etc* (F) Business operating transactions;
- Etc* (G) Insurance and annuity transactions;
- Etc* (H) Estate, trust, and other beneficiary transactions;
- Etc* (I) Claims and litigation;
- Etc* (J) Personal and family maintenance;



EXHIBIT G

See(K)  
See(M)  
E-K(N)

Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service ;

Retirement plan transactions;

Tax matters;

ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

\_\_\_ I grant my agent (attorney-in-fact) the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

EXHIBIT G

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: Kristin Cobb.

Signed this 24 day of January, 2022.

*Elvie Cruz Kingston*  
Elvie Cruz Kingston

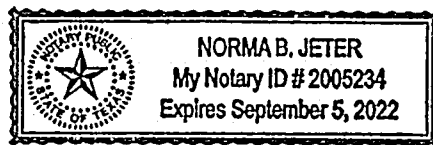
State of Texas §

County of Harris §

This document was acknowledged before me on this 24<sup>th</sup> day of January 2022, by Elvie Cruz Kingston.

*Norma B. Jeter*  
Notary Public in and for  
The State of Texas

PREPARED IN THE OFFICE OF:  
AFTER RECORDING RETURN TO:  
Susan C. Norman  
Attorney and Counselor at Law  
P. O. Box 55585, Houston, Texas 77255  
713-882-2066  
SueNorman@SueNormanLaw.com



IMPORTANT INFORMATION FOR AGENT (ATTORNEY-IN-FACT)

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal's benefit;
- (4) avoid conflicts that would impair your ability to act in the principal's best interest; and
- (5) disclose your identity as an agent or attorney in fact when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" or "attorney in fact" in the following manner:

(Elvie Cruz Kingston by Jonna Caswell-Johnson (or as subsequent agent, Kristin Cobb) as Agent (or as Attorney in Fact)).

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records of each action taken or decision made on behalf of the principal;
- (2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and
- (3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:
  - (A) the property belonging to the principal that has come to your knowledge or into your possession;
  - (B) each action taken or decision made by you as agent or attorney in fact;
  - (C) a complete account of receipts, disbursements, and other actions of you as agent or attorney in fact that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;
  - (D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;

## EXHIBIT G

- (E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;
- (F) each known liability;
- (G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and
- (H) all documentation regarding the principal's property.

### Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

- (1) the principal's death;
- (2) the principal's revocation of this power of attorney or your authority;
- (3) the occurrence of a termination event stated in this power of attorney;
- (4) if you are married to the principal, the dissolution of your marriage by court decree of divorce or annulment;
- (5) the appointment and qualification of a permanent guardian of the principal's estate; or
- (6) if ordered by a court, the suspension of this power of attorney on the appointment and qualification of a temporary guardian until the date the term of the temporary guardian expires.

### Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

**THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.**

EXHIBIT H

DECLARATION OF GUARDIAN IN THE EVENT OF LATER INCAPACITY OR NEED OF GUARDIAN

I, Elvie Cruz Kingston, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

- 1. I designate Jonna Caswell-Johnson to serve as guardian of my person; and Kristin J. Cobb, to serve as first alternate guardian of my person.
2. I designate Jonna Caswell-Johnson, to serve as guardian of my estate; and Kristin J. Cobb to serve as first alternate guardian of my estate
3. If any guardian or alternate guardian dies, fails, or refuses to qualify, or resigns, the next named alternate guardian succeeds the prior named guardian and becomes my guardian.

DISQUALIFICATION OF PERSONS AS GUARDIANS

- 4. I specifically disqualify my brother Ernesto "Ernest" Cruz, from serving as guardian of my person and/or from serving a guardian of my estate.
5. I specifically disqualify my brother's daughter, my niece, Michelle Harttman, from serving as guardian of my person and/or from serving a guardian of my estate.
6. I specifically disqualify any child of my brother Ernesto "Ernest" Cruz, from serving as guardian of my person and/or from serving a guardian of my estate.

SIGNED on January 24th, 2022.

Handwritten signature of Elvie Cruz Kingston

Elvie Cruz Kingston Declarant

Handwritten signature of Holly Crampton
Witness

Handwritten signature of Frederick B. Cull
Witness FREDERICK B. CULL

10900 NW Freeway Ste 102
Houston, Texas 77092
Address

P.O. Box 550286
Houston, TX 77255-0286
Address

SELF-PROVING AFFIDAVIT

STATE OF TEXAS

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this date personally appeared Elvie Cruz Kingston, the Declarant, and Holly Crampton and Frederick B. Call, as Witnesses, and all being duly sworn, the Declarant said that the above instrument was her Declaration of Guardian and that she had made and executed it for the purposes therein expressed. The Witnesses declared to me that they are each fourteen years of age or older, and that they saw the Declarant sign the declaration, that they signed the declaration as Witnesses, and that the Declarant appeared to them to be of sound mind.

*Elvie*

Elvie Cruz Kingston, Declarant

*Frederick B. Call*

Witness, Affiant

*Holly Crampton*

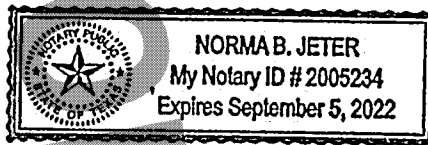
Witness, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME by the said Elvie Kingston, and by the said Holly Crampton and Frederick B. Call, Affiants, this the 24th day of January, 2022.

*Norma B. Jeter*

Notary Public, State of Texas

PREPARED IN THE OFFICE OF:  
Susan C. Norman  
Attorney and Counselor at Law  
P. O. Box 55585  
Houston, Texas 77255



### Physician's Certificate of Medical Examination

Revision: September 2015

In the Matter of the Guardianship of  
Elvie Cruz Kingston  
an Alleged Incapacitated Person

For Court Use Only  
Court Assigned: \_\_\_\_\_

#### To the Physician

This form is to enable the Court to determine whether the individual identified above is incapacitated according to the legal definition (on page 3), and whether that person should have a guardian appointed.

#### 1. General Information

Physician's Name Richard M. Barrett MD. Phone: (713) 528-5090  
Office Address 3735 Kirby #700  
Houston Tx 77098-3979

YES  NO I am a physician currently licensed to practice in the State of Texas.

Proposed Ward's Name Elvie Cruz Kingston  
Date of Birth 3/10/45 Age 76 Gender  M  F  
Proposed Ward's Current Residence: Harris County -

I last examined the Proposed Ward on January 26, 2022 at: TelHealth  
 a Medical facility  the Proposed Ward's residence  Other: \_\_\_\_\_

YES  NO The Proposed Ward is under my continuing treatment.  
 YES  NO Before the examination, I informed the Proposed Ward that communications with me would not be privileged.  
 YES  NO A Mini-mental status exam was given. If "YES," please attach a copy.

#### 2. Evaluation of the Proposed Ward's Physical Condition

Physical Diagnosis: Not Done  
a. Severity:  Mild  Moderate  Severe  
b. Prognosis: \_\_\_\_\_  
c. Treatment/Medical History: \_\_\_\_\_

#### 3. Evaluation of the Proposed Ward's Mental Functioning

Mental Diagnosis: Dementia  
a. Severity:  Mild  Moderate  Severe  
b. Prognosis: It will get worse.  
c. Treatment/Medical History: I was not provided with medications -

If the mental diagnosis includes dementia, answer the following: she was lost in a mental facility  
 YES  NO---- It would be in the Proposed Ward's best interest to be placed in a secured facility for the elderly or a secured nursing facility that specializes in the care and treatment of people with dementia.  
 YES  NO---- It would be in the Proposed Ward's best interest to be administered medications appropriate for the care and treatment of dementia.  
 YES  NO---- The Proposed Ward currently has sufficient capacity to give informed consent to the administration of dementia medications.

d. Possibility for Improvement:  
 YES  NO---- Is improvement in the Proposed Ward's physical condition and mental functioning possible?  
If "YES," after what period should the Proposed Ward be reevaluated to determine whether a guardianship continues to be necessary? \_\_\_\_\_

**4. Cognitive Deficits**

- a. The Proposed Ward is oriented to the following (check all that apply):  
 Person  Time  Place  Situation
- b. The Proposed Ward has a deficit in the following areas (check all areas in which Proposed Ward has a deficit):  
 --- Short-term memory  
 --- Long-term memory  
 --- Immediate recall  
 --- Understanding and communicating (verbally or otherwise)  
 --- Recognizing familiar objects and persons  
 --- Solve problems  
 --- Reasoning logically  
 --- Grasping abstract aspects of his or her situation  
 --- Interpreting idiomatic expressions or proverbs  
 --- Breaking down complex tasks down into simple steps and carrying them out
- c.  YES  NO---The Proposed Ward's periods of impairment from the deficits indicated above (if any) vary substantially in frequency, severity, or duration.

**5. Ability to Make Responsible Decisions**

Is the Proposed Ward able to initiate and make responsible decisions concerning himself or herself regarding the following:

- YES  NO---- Make complex business, managerial, and financial decisions  
 YES  NO---- Manage a personal bank account  
If "YES," should amount deposited in any such bank account be limited?  YES  NO  
 YES  NO---- Safely operate a motor vehicle  
 YES  NO---- Vote in a public election  
 YES  NO---- Make decisions regarding marriage  
 YES  NO---- Determine the Proposed Ward's own residence  
 YES  NO---- Administer own medications on a daily basis  
 YES  NO---- Attend to basic activities of daily living (ADLs) (e.g., bathing, grooming, dressing, walking, toileting) without supports and services  
 YES  NO---- Attend to basic activities of daily living (ADLs) (e.g., bathing, grooming, dressing, walking, toileting) with supports and services  
 YES  NO---- Attend to instrumental activities of daily living (e.g., shopping, cooking, traveling, cleaning)  
 YES  NO---- Consent to medical and dental treatment at this point going forward  
 YES  NO---- Consent to psychological and psychiatric treatment at this point going forward

**6. Developmental Disability**

- YES  NO---- Does the Proposed Ward have developmental disability?  
If "NO," skip to number 7 below.  
If "YES," answer the following question and look at the next page.

Is the disability a result of the following? (Check all that apply)

- YES  NO---- Intellectual Disability?  
 YES  NO---- Autism?  
 YES  NO---- Static Encephalopathy?  
 YES  NO---- Cerebral Palsy?  
 YES  NO---- Down Syndrome?  
 YES  NO---- Other? Please explain \_\_\_\_\_

Answer the questions in the "Determination of Intellectual Disability" box below only if both of the following are true:

- (1) The basis of a proposed ward's alleged incapacity is intellectual disability.  
and



EXHIBIT I

(2) You are making a "Determination of Intellectual Disability" in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind.

If you are not making such a determination, please skip to number 7 below.

**"DETERMINATION OF INTELLECTUAL DISABILITY"**

Among other requirements, a Determination of Intellectual Disability must be based on an interview with the Proposed Ward and on a professional assessment that includes the following:

- 1) a measure of the Proposed Ward's intellectual functioning;
- 2) a determination of the Proposed Ward's adaptive behavior level; and
- 3) evidence of origination during the Proposed Ward's developmental period.

As a physician, you may use a previous assessment, social history, or relevant record from a school district, another physician, a psychologist, an authorized provider, a public agency, or a private agency if you determine that the previous assessment, social history, or record is valid.

1. Check the appropriate statement below. If neither statement is true, skip to number 7 below.

- I examined the proposed ward in accordance with rules of the executive commissioner of the Health and Human Services Commission governing Intellectual Disability examinations, and my written findings and recommendations include a determination of an intellectual disability.
- I am updating or endorsing in writing a prior determination of an intellectual disability for the proposed ward made in accordance with rules of the executive commissioner of the Health and Human Services Commission by a physician or psychologist licensed in this state or an authorized provider certified by the Department of Aging and Disability Services to perform the examination.

2. What is your assessment of the Proposed Ward's level of intellectual functioning and adaptive behavior?

- Mild (IQ of 50-55 to approx. 70)
- Moderate (IQ of 35-40 to 50-55)
- Severe (IQ of 20-25 to 35-40)
- Profound (IQ below 20-25)

3.  Yes  No---- Is there evidence that the Intellectual disability originated during the Proposed Ward's developmental period?

*Note to attorneys: If the above box is filled out because a determination of intellectual disability has been made in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind, a Court may grant a guardianship application if (1) the examination is made not earlier than 24 months before the date of the hearing or (2) a prior determination of an intellectual disability was updated or endorsed in writing not earlier than 24 months before the hearing date. If a physician's diagnosis of Intellectual disability is not made in accordance with rules of the executive commissioner — and the above box is not filled out — the court may grant a guardianship application only if the Physician's Certificate of Medical Examination is based on an examination the physician performed within 120 days of the date the application for guardianship was filed. See Texas Estates Code § 1101.104(1).*

**7. Definition of Incapacity**

For purposes of this certificate of medical examination, the following definition of incapacity applies:

An "Incapacitated Person" is an adult who, because of a physical or mental condition, is substantially unable to: (a) provide food, clothing, or shelter for himself or herself; (b) care for the person's own physical health; or (c) manage the person's own financial affairs. Texas Estates Code § 1002.017.

**8. Evaluation of Capacity**

YES  NO---- Based upon my last examination and observations of the Proposed Ward, it is my opinion that the Proposed Ward is incapacitated according to the legal definition in section 1002.017 of the Texas Estates Code, set out in the box above.

If you indicated that the Proposed Ward is incapacitated, indicate the level of incapacity:

- Total ----- The Proposed Ward is totally without capacity (1) to care for himself or herself and (2) to manage his or her property.
- Partial ----- The Proposed Ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.

EXHIBIT I

**Evaluation of Capacity (continued)**

If you indicated the Proposed Ward's incapacity is partial, what specific powers or duties of the guardian should be limited if the Proposed Ward receives supports and services? limited from establishing the legal domicile, from contrary to Ms. Kingston's wishes  
limited

If you answered "NO" to all of the questions regarding decision-making in Section 5 (on page 2) and yet still believe the Proposed Ward is partially incapacitated, please explain: See #11 below.

If you answered "YES" to any of the questions regarding decision-making in Section 5 (on page 2) and yet still believe the Proposed Ward is totally incapacitated, please explain: She is not totally incapacitated

**9. Ability to Attend Court Hearing**

- YES  NO---- The Proposed Ward would be able to attend, understand, and participate in the hearing.
- YES  NO---- Because of the Proposed Ward's incapacities, I recommend that the Proposed Ward not appear at a Court hearing.

N.A.  YES  NO---- Does any current medication taken by the Proposed Ward affect the demeanor of the Proposed Ward or his or her ability to participate fully in a court proceeding? have interfered. I was not told of the medicines she withdrew from that might

**10. What is the least restrictive placement that you consider is appropriate for the Proposed Ward:**

- Nursing home level of care
- Group Home
- Own Home or with family
- Assisted Living Facility
- Memory care unit
- Other Own home with out honor care

**11. Additional Information of Benefit to the Court:** If you have additional information concerning the Proposed Ward that you believe the Court should be aware of or other concerns about the Proposed Ward that are not included above, please explain on an additional page.

That Michelle Hartman's <sup>her</sup> nettle, not he permitted to handle her financial affairs; she was adamant about this.  
Richard M. Bennett MD 2/3/22

Physician's Signature

Richard M. Bennett

Physician's Name Printed

Date

F0381 Texas

License Number

Revised September 2015

11-b = The Court should follow Ms. Kingston's wishes as to whom she does and does not want to be in control of her person and of her finances.

**AFFIDAVIT OF GENESIS LUNA**

**STATE OF TEXAS §**

**COUNTY OF MCLENNAN §**

Before me, the undersigned authority, personally appeared Genesis Luna, who upon being duly sworn by me, upon her oath did depose and testify as follows:

“My name is Genesis Luna. My date of birth is July 7, 1990, and my address is 4300 W. Waco Dr., Ste B2-260, Waco, Texas 76710. I am a witness in this case for the *Application for Emergency Appointment of Temporary Guardian of Person and Estate* of Elvie Lou Cruz Kingston. I am over the age of eighteen, fully competent, and able to make this affidavit. I declare under the penalty of perjury that the following facts are true and correct when I state those of my own knowledge, and to inform myself, I have also relied upon facts I received from other reliable persons, including my mother, my father, Jonna Caswell-Johnson.

“My name is Genesis Luna. I am a witness in this case for the *Application for Emergency Appointment of Temporary Guardian of Person and Estate* of Elvie Lou Cruz Kingston. I am over the age of eighteen, fully competent, and able to make this affidavit. All statements herein are made from my personal knowledge and are true and correct.

““My family and I have known Elvie Lou Cruz Kingston (“Elvie” or “Elvie Kingston”) for many years. After graduating from college, I lived with Elvie from the fall of 2011 to the winter of 2012 when I married my husband, Ryan Luna. I call Elvie “Gma,” and I called her deceased husband, John Lewis Kingston, “GJ.”

EXHIBIT J

“Elvie and I attended events together, cooked at the house, and lived harmoniously. We went to garage sales on weekends, attended Champions Forest Baptist Church on Sundays, and enjoyed eating at one of her favorite restaurants, Los Cucos.

“Elvie has a strong personality; she is opinionated, and loves a good debate. She has always been very clear about what she wanted and did not want. I was grateful for the opportunity to live with Elvie in her home and experience so many good times with her, I felt safe. Elvie requested that I help with chores, such as vacuuming the top floor while she did the downstairs. I love Elvie very much; she is my friend, and I want to see that she is safe and happy.

“I have been aware since February 2, 2022, of the concerns my parents and Elvie’s friends, including Jonna Caswell-Johnson, have regarding Elvie Kingston. I am aware that my mother, Nubia Devine is an Applicant for an Emergency Temporary Guardianship of Elvie’s Person, and that Elvie and her deceased husband appointed my father, John Devine, as the successor Trustee of Elvie’s living trust.

“Because no one seemed to be able to get information about Elvie from Elvie’s brother, Ernest Cruz, I called him on February 8, 2022, to find out where my friend, Elvie Kingston, was located so that my mother and I could visit her.

“Mr. Cruz said, “We’ve got her in San Antonio right now,” and “Michelle has her in San Antonio.” He said Elvie was being re-evaluated for the next two weeks. He said no one could visit her at all. He said Elvie has dementia, that “she’s lost her mind,” “she’s gone,” “she’s lost it.”

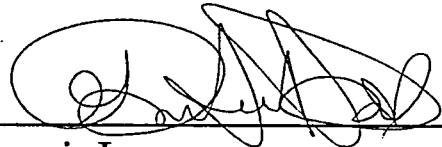
“Mr. Cruz said “[he] was the only one Elvie recognized.” He said while Elvie was living with them at the ranch, that she “turned on my wife and my son” but said nobody got hurt. Mr. Cruz said her friends in Houston pulled Elvie out of where she was, so she was having to be re-evaluated “for her behavior.”

EXHIBIT J

"I called Ernest Cruz again on March 10, 2022, and received only a voice mail, he did not return my call. On March 15, 2022, I called Michelle Hartman, to request her permission to go see Elvie. As I understand it, Ms. Hartman apparently has taken control over Elvie, and has placed her in Guadalupe Valley Nursing Center, 1210 Eastwood Dr., Seguin, Texas 78155, and only those persons Ms. Hartman permits are allowed to see Elvie.. I was unable to reach Ms. Hartman and I had to leave a voice mail.

"After reviewing information provided by Jonna Caswell-Johnson and speaking to Jonna, I am very concerned that Elvie is being drugged again and placed someplace that will lock her down and isolate her as was done from November 2021 to January 24, 2022, when Jonna was able to rescue her.

Signed on March 15, 2022.

A handwritten signature in black ink, appearing to read "Genesis Luna", written over a horizontal line.

Genesis Luna

EXHIBIT K

FIRST AMENDMENT  
TO THE  
JOHN LEWIS KINGSTON AND ELVIE LOU KINGSTON  
REVOCABLE LIVING TRUST

THE STATE OF TEXAS §  
COUNTY OF HARRIS § KNOW ALL MEN BY THESE PRESENTS:

That we, JOHN LEWIS KINGSTON AND ELVIE LOU KINGSTON, residents of HARRIS County, Texas, do make, publish and declare this First Amendment to the JOHN LEWIS KINGSTON AND ELVIE LOU KINGSTON REVOCABLE LIVING TRUST, dated July 17, 2001.

By this Amendment, we wish to amend Article I and Article VII as follows:

(A) Article I is amended by adding section 1.03 as follows:

“1.03 All property that a Grantor transfers to the Trustee pursuant to this instrument which was community property, quasi-community property, or separate property at the time of the transfer shall remain, respectively community property, quasi-community property, or the separate property of the Grantor transferring such property to the Trustee. Community and quasi-community property transferred to the Trustee by the Grantors shall be their community property, and treated as such. This property, as invested and reinvested, together with the rents, issues, and profits therefrom shall retain its character as community property during the joint lifetimes of the Grantors in spite of any change in the situs of the Trust, subject, however to the provisions of this Agreement. The addition of this paragraph shall be retroactive to the creation of this trust.”

EXHIBIT K

(B) Article VII is amended by adding subsection (t) to section 7.01 as follows:

“(t) To enter into margin transactions, the buying and selling of stock options, puts and calls, with only one Trustee’s signature if the Grantors are serving as Co-Trustees. “

In every other respect, we hereby confirm and republish the **JOHN LEWIS KINGSTON AND ELVIE LOU KINGSTON REVOCABLE LIVING TRUST**, dated July 17, 2001.

This Instrument is signed and sealed on this the 11<sup>th</sup> day of March, 2003.

GRANTOR:

TRUSTEE:

John Lewis Kingston  
JOHN LEWIS KINGSTON

John Lewis Kingston  
JOHN LEWIS KINGSTON

Elvie Lou Kingston  
ELVIE LOU KINGSTON

Elvie Lou Kingston  
ELVIE LOU KINGSTON

Michael C. Riddle  
Witness

10211 Kleppel Rd  
Address

Michael C. Riddle  
Printed Name of Witness

Tomball, Texas 77375

Eileen Harris  
Witness

502 Shady Glade  
Address

Eileen Harris  
Printed Name of Witness

Houston, Texas 77090

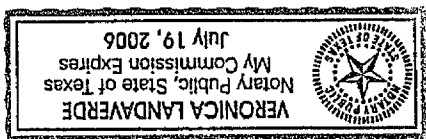
EXHIBIT K

THE STATE OF TEXAS §

COUNTY OF HARRIS §

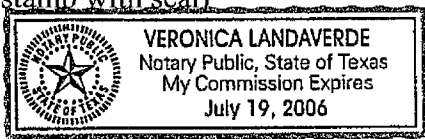
BEFORE ME, the undersigned authority, on this day personally appeared JOHN LEWIS KINGSTON AND ELVIE LOU KINGSTON, known to me to be the persons whose name are subscribed to the foregoing instrument as Grantors and Trustees and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 11<sup>th</sup> day of March, 2003.



(Notary stamp with seal)

*Veronica Landaverde*  
Notary Public, State of Texas



COPY UNOFFICIAL



**EXHIBIT L**

**SECOND AMENDMENT TO THE**  
**JOHN LEWIS KINGSTON AND ELVIE LOU KINGSTON**  
**REVOCABLE LIVING TRUST**

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS §

We, **JOHN LEWIS KINGSTON and ELVIE LOU KINGSTON**, residents of HARRIS County, Texas, do make, publish and declare this Second Amendment to the **JOHN LEWIS KINGSTON AND ELVIE LOU KINGSTON REVOCABLE LIVING TRUST**, dated July 17, 2001, and amended March 11, 2003. By this Amendment, we wish to amend Section 5.04(2) in Article V and Section 8.02 in Article VIII, to read as follows:

(A) Section 5.04(2) in Article V is deleted and replaced with the following:

“(2) On the death of the surviving Grantor, the remaining trust principal and accumulated income shall be administered by the Trustees as follows:

(A) If the gift identified in this subsection (A) is not made under Grantors’ Wills, then this Section shall complete such gift: The sum of ten thousand dollars (\$10,000) and Grantors’ pets shall be distributed, outright, to **JONNA and MIKE JOHNSON** provided they survive the Grantors’ by thirty (30) days. If **JONNA and MIKE JOHNSON** do not survive the Grantors’ or are not able to care for such pets, then this gift shall lapse and the sum of ten thousand dollars (\$10,000) and Grantors’ pets shall be distributed to **JOHN DEVINE**, provided he survives the Grantors’ by thirty (30) days. If he does not so survive, then this gift shall lapse and be distributed as part of the residuary trust estate;

(B) Fifty percent (50%) of the remainder of the trust estate shall be distributed, outright, to the **FIRST ASSEMBLY OF GOD**, Spring, Texas, to be utilized as follows:

EXHIBIT L

- (i) One-half (½) for the benefit of a building endowment fund entitled “The John and Elvie Kingston Endowment Fund”; and
  - (ii) One-half (½) for the benefit of the mission programs.
- (C) The remainder of the trust estate shall continue to be held IN TRUST, in separate, equal shares, for the benefit of the Grantors' following named niece and nephew: **MICHELLE CRUZ HARTMAN and ERNEST ANTHONY CRUZ** (hereinafter referred to individually as “beneficiary” and collectively as “beneficiaries”). If a named beneficiary is not living at the time his or her trust is to be funded, then the trust estate of such deceased beneficiary shall continue to be held IN TRUST for the benefit of the then living descendants of such deceased beneficiary, per stirpes and not per capita (with each such descendant becoming the “beneficiary” of his or her own trust). If a beneficiary is not living at the time his or her trust is to be funded and has failed to leave descendants who are then living, then such deceased beneficiary’s share of the trust estate shall be added to the trust created for the other named beneficiary or for the benefit of the descendants of such other named beneficiary if such other named beneficiary is not then living, per stirpes and not per capita. The trust estates created for the benefit of the beneficiaries shall be administered and distributed as provided herein.”
- (B) Section 8.02 in Article VIII is deleted and replaced with the following:

“8.02 **JOHN LEWIS KINGSTON and ELVIE LOU KINGSTON** shall serve as Co-Trustees of all trusts created herein. If either **JOHN LEWIS KINGSTON or ELVIE LOU KINGSTON** does not qualify, or having qualified, dies, resigns, or becomes incapacitated, then the other shall serve as sole Trustee of all trusts created hereunder. If both Grantors do not qualify, or having qualified, die, resign, or become incapacitated, then **JOHN DEVINE** shall serve as sole Trustee of all trusts created hereunder. If **JOHN DEVINE** does not qualify, or having qualified, dies, resigns, or becomes incapacitated, then **MICHELLE CRUZ HARTMAN** shall serve as sole Trustee of all trusts created hereunder. Notwithstanding anything to the contrary in this Section 8.02, as soon as practicable after the death of both Grantors, **MICHELLE CRUZ HARTMAN and ERNEST ANTHONY CRUZ** shall serve as sole Trustee of the trust created for his or her own benefit. Further, notwithstanding anything to the contrary herein, and after the death of both Grantors, upon attaining the age of twenty-five (25), each beneficiary shall become Co-Trustee of the trust created for his or her benefit, and upon attaining the age of thirty (30), such beneficiary shall become sole Trustee of the trust created for his or her benefit. Each individual Co-Trustee named above can make hire/fire decisions on the corporate Co-Trustee.”

EXHIBIT L

In every other respect, we hereby confirm and republish the **JOHN LEWIS KINGSTON AND ELVIE LOU KINGSTON REVOCABLE LIVING TRUST**, dated July 17, 2001, and amended March 11, 2003.

This Instrument is signed and sealed on this the 16 day of November, 2007.

GRANTOR:

TRUSTEE:

John L. Kingston  
JOHN LEWIS KINGSTON

John L. Kingston  
JOHN LEWIS KINGSTON

Elvie L. Kingston  
ELVIE LOU KINGSTON

Elvie L. Kingston  
ELVIE LOU KINGSTON

Michael C. Riddle  
Witness

4201 FM 1960 W., Ste. 550  
Address

Michael C. Riddle  
Printed Name of Witness

Houston, Texas 77068

James Lee  
Witness

4201 FM 1960 W., Ste. 550  
Address

Spencer Song  
Printed Name of Witness

Houston, Texas 77068

EXHIBIT L

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared JOHN LEWIS KINGSTON AND ELVIE LOU KINGSTON, known to me to be the persons whose name are subscribed to the foregoing instrument as Grantors and Trustees and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 16 day of November, 2007.



*Keri Barrow*  
\_\_\_\_\_  
Notary Public, State of Texas

(Notary stamp with seal)

UNRECORDED  
ORIGINAL  
COPY

EXHIBIT M

W503870  
03/17/03 200097264 \$11.00

GENERAL WARRANTY DEED

WD  
11  
F

Date: 11th MARCH, 2003

Grantor: JOHN L. KINGSTON AND WIFE, ELVIE L. KINGSTON

Grantor's Mailing Address (including county):

7514 Moreton Court  
Spring, Texas 77379  
Harris County

Grantee: JOHN LEWIS KINGSTON AND ELVIE LOU KINGSTON REVOCABLE LIVING TRUST dated July 17, 2001, as amended, John Lewis Kingston and Elvie Lou Kingston, Co-Trustees *?*

Grantee's Mailing Address (including County):

7514 Moreton Court  
Spring, Texas 77379  
Harris County

Consideration: TEN AND NO/100 DOLLARS and other good and valuable consideration

Property (including any improvements):

Lot Thirty-six (36), in Block Two (2) of MEMORIAL NORTHWEST, SECTION SIXTEEN (16), an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 332, Page 149 of the Map Records of Harris County, Texas.

Reservations From and Exceptions to Conveyance and Warranty:

Easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded instruments, other than liens and conveyances, that affect the property; taxes for the current year, the payment of which Grantee assumes.

Grantor, for the consideration, receipt of which is acknowledged, and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executor, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors,

FILE FOR RECORD  
8:00 AM

MAR 17 2003

*Shirley A. Kingman*  
County Clerk, Harris County, Texas

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EXHIBIT M

administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

*John L. Kingston*  
\_\_\_\_\_  
JOHN L. KINGSTON

*Elvie L. Kingston*  
\_\_\_\_\_  
ELVIE L. KINGSTON

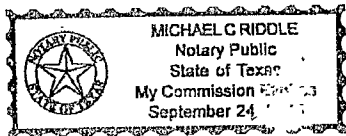
*John*

ACKNOWLEDGMENT

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the 11<sup>th</sup> day of March, 2003, by John L. Kingston and wife, Elvie L. Kingston.



*Michael C. Riddle*  
\_\_\_\_\_  
Notary Public, State of Texas

[Notary Stamp]

PREPARED BY THE OFFICE OF AND RETURN TO:

MICHAEL C. RIDDLE  
Riddle & Brazil, L.L.P.  
4201 FM 1960 West, Suite 550  
Houston, Texas 77068  
PH: 281-537-7110  
FAX: 281-537-9481

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS HEREBY AND UNENFORCEABLE UNDER FEDERAL LAW.  
THE STATE OF TEXAS  
COUNTY OF HARRIS  
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stated herein by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

MAR 17 2003



*Dorothy L. Kayman*  
\_\_\_\_\_  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

4582-55-7-95

**COPY**

**COPY**