

## **EXEMPT FUND**

# **THE NYSARC TRUST**

(A Fund for Persons with Disabilities)

## **EXEMPT FUND**

### **The NYSARC Trust Trustees' Service Agreement**

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**As Amended**

**THIS AGREEMENT**, made the 19th day of November 2002 by and between NYSARC, Inc. (formally known as New York State Association for Retarded Children, Inc.), a New York Corporation having its principal office at 393 Delaware Avenue, Delmar, New York 12054 (hereinafter called "Association") and Warren H. Heilbronner, Harvey Platt, James Hayes, John Schuppenhauer, Sonia Crannage, Joel Kaplan, Howard Siegel and Edward Wilcenski (hereinafter collectively called "Trustees") amends, modifies and restates a previous agreement made on the 19th day of July, 1972, as amended, by and between the NEW YORK STATE ASSOCIATION FOR RETARDED CHILDREN, INC., and A. Lawrence Abrams, Elliot Aronin, William T. Conklin, Robert J. Hodson, James F. Reville, and Robert H. Wagner, formerly Trustees of **THE NYSARC TRUST - EXEMPT FUND**.

**WITNESSETH:**

**WHEREAS**, the Association on July 19, 1972 established a Trust known as The NYSARC Trust - Exempt Fund for the receipt, management, investment and distribution of funds solely for the benefit of designated beneficiaries with mental retardation and other developmental disabilities; and

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**WHEREAS**, contemporaneously with the execution of that Agreement, the Association contributed to the Trustees the sum of One Hundred Dollars (\$100.00); and

**WHEREAS**, the Association desires to amend and modify and restate that certain Agreement dated July 19, 1972, as amended, to better meet the needs of individuals with mental retardation and other developmental disabilities; and

**WHEREAS**, in accordance with the provisions of the predecessor Agreement, the modifications and amendments contained herein were approved by at least two-thirds (2/3 rds) of the Trustees; and

**WHEREAS**, the Association still desires to maintain a fund for the receipt, management, investment and disbursement of funds solely for the benefit of designated beneficiaries with mental retardation and other developmental disabilities (herein called "Beneficiary");

**NOW, THEREFORE**, it is hereby agreed between the Association and the Trustees, and the Trustees hereby declare, that the Trustees shall hold, administer, use and dispose of such contribution and all additional funds and property hereafter received by the Trustees as contributions, exclusively for the uses and purposes and subject to the provision hereinafter set forth.

The NYSARC Trust, Trustees' Services shall consist of three separate but commonly managed funds. The name of this Fund shall be "**THE NYSARC TRUST - EXEMPT FUND**".

### ARTICLE I

#### *Purposes*

- 1) The Trustees shall receive any and all donations, bequests of gifts as shall be paid to them as Trustees, in cash or in property, as shall be deemed expedient or proper by the Trustees, and thereon, shall constitute the fund to be managed and administered by the said Trustees, for the following purposes.
- 2) The purposes of this Fund are:
  - (a) To receive, hold and invest and reinvest donations, bequests and gifts for the benefit of the Guardianship Program of the Association.
  - (b) To expend the income earned thereon for:
    - (i) bookkeeping and accounting expenses;

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- (ii) commissions, if any;
- (iii) all other administrative expenses of The NYSARC Trust;
- (iv) advocacy for the well being and quality of life of persons for whom the Association has been appointed guardian to carry out the objectives of the Association's Guardianship Program; and
- (v) assistance to chapters of the Association in carrying out the mission of their guardianship programs.

Provided, however, that no part of this Fund shall revert to or be used for the benefit of any donor, Trustee or other individual other than a person with mental retardation and other developmental disabilities, and/or the Guardianship Program of the Association. No part of the direct or indirect activities of this Fund shall consist of carrying on propaganda, or otherwise attempting to influence legislation, or of participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office. Notwithstanding any other provision hereof, this Fund shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under Section 501 (c) (3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended, or by an organization, contributions to which are deductible under Section 170 (c) (2) of such Code and Regulations as they now exist or as they hereafter be amended.

- 3) Disbursements from this Fund shall be at the sole discretion of the Trustees. Such discretion shall be exercised at all times in accordance with the general purposes of the Trust as set forth above.

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## ARTICLE II

### *Trustees*

- 1) There shall at all times be not less than five (5) or more than nine (9) Trustees, who shall serve without compensation other than reimbursement for necessary expenses. Each Trustee shall be appointed by the Executive Committee of the Association for a term of five (5) years. At the conclusion of each term, the Executive Committee shall determine whether to reappoint the Trustee for an additional term. There shall be no term limits. Following the approval of this amendment the then acting Trustees shall determine by lots the termination of their current term; the terms of two Trustees each terminating three years, four years and five years thereafter, and the term of one Trustee each terminating one year and two years thereafter.
- 2) Any Trustee acting hereunder may resign at any time by giving written notice to the Executive Committee of the Association. Any Trustee may be removed at any time only for good cause, incapacity or failure to act, by a vote of three-fourths (3/4) of the full membership of the Executive Committee of the Association. The removal of a Trustee shall be by an instrument in writing containing a duly attested copy of the vote of such removal, addressed to the subject Trustee and signed by the President of the Association.
- 3) Upon the resignation, removal or death of a Trustee, the Executive Committee of the Association shall select a successor Trustee to fill the unexpired term by executing and delivering to the successor Trustee written notice of his/her appointment and receiving from him/her a written acceptance of said appointment. Pending the appointment of and the execution and filing of the acceptance by any successor Trustee, the then acting or remaining Trustees hereunder shall have the full power to act.
- 4) Every successor Trustee appointed to and accepting a Trusteeship hereunder shall have all the rights, title, powers, duties, exemptions and limitations of the original Trustees; but no successor Trustee shall in any way be liable or responsible for anything done or omitted in the administration of the Trust prior to the date of his becoming a successor Trustee. The Association shall promptly notify the remaining Trustees and the participants upon the happening of any change in the personnel of the Trusteeship.
- 5) No successor Trustee shall have any duty to inquire into the administration of the Fund by

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## ARTICLE III

any prior Trustee.

### *Organization and Duties of Trustees*

- 1) The Trustees shall elect their own Chairperson.
- 2) The Chairperson shall preside at all meetings of Trustees, advise the Executive Committee of the Association of the status of the Fund, and in general insure that the Fund is efficiently administered so as to best carry out its purposes.
- 4) The Trustees shall meet as they determine to be necessary but in no event shall it be less than annually. A majority of the Trustees then acting at any duly held meeting thereof shall constitute a quorum; and any action shall be by a majority vote of all Trustees at the meeting. A meeting need not be called or held to make any decisions or take any action but any decision or action may be upon written documents and signed by a majority of the Trustees. Any one or more Trustees may participate in a meeting of the Trustees by telephone conference or similar communications equipment allowing all participants in the meeting to hear each other at the same time. Participation by such means shall constitute presence at the meeting.
- 5) The Trustees shall submit annually their financial accounting to the Executive Committee of the Association which accounts shall be audited by a certified public accountant selected by the Executive Committee of the Association and no person or persons other than the Executive Committee of the Association may require any accounting by the Trustees or may bring any action against the Trustees individually or as a group, with respect to the said Fund and the actions of the Trustees.
- 6) The Trustees shall operate under an annual administrative budget, which shall be subject to the approval of, or to such limitations as may be placed thereon, by the Executive Committee of the Association.

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## ARTICLE IV

### *Liability of Trustees*

- 1) The Trustees shall not be liable for any error of judgment, or for any loss arising out of any act or omission in the administration of this Fund, so long as they act with ordinary care, good faith and diligence without gross negligence, fraud, misconduct or willful breach; nor shall they be personally liable for the acts or omissions of each other, or for the acts or omissions of any officer, agent or servant elected or appointed by or acting for them; and they shall not be obliged to give bond, except as provided herein, to secure the due performance of this Fund by them. The Trustees shall not be liable for any losses which may be incurred upon investment in the Fund except to the extent such losses shall have been caused by bad faith.
- 2) The Trustees shall be fully protected in acting upon any instrument, certificate or paper believed by them to be genuine and to be signed or presented by the proper person or persons, and the Trustees shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.
- 3) All persons dealing with the Trustees are released from inquiry into the decision or authority of the Trustees and from seeing to the application of any moneys, securities, or other property paid or delivered to the Trustees.

## ARTICLE V

### *Powers of Trustees*

- 1) The Trustees are hereby expressly authorized and empowered, in their sole discretion:
  - (a) To retain and hold any of the property received by them, either on the creation of the Fund or by additions to the Fund, so long as the Trustees in their absolute discretion shall deem it advisable to do so;
  - (b) To invest and reinvest in any property, real, personal and mixed and wherever situate, including but not by way of limitation, common or preferred stocks, mutual funds, bonds, loans, notes, mortgages, certificates of deposit, interest or participation and other forms of securities or investments without being limited in any respect by statute or Court rule or decision of any jurisdiction now or hereafter enforced purporting to limit or otherwise affect

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investment by Trustees and without regard to the proportion of such property or property of a similar character so held or thereafter acquired may bear to the entire amount of the Fund;

- (c) To sell, convey or dispose of any property, whether real or personal, at any time forming a part of the Fund, for cash or on credit, in such manner and on such terms and conditions as they may deem best, and no person dealing with the Trustees shall be bound to see the application of moneys paid;
- (d) To sell, pledge, mortgage, transfer, exchange, convert or otherwise dispose of, or grant options with respect to, any and all property at any time forming a part of the Fund, in such manner, at such time or times, for such purposes, for such prices and upon such terms, credits and conditions as they may deem advisable;
- (e) To borrow money for any purpose connected with the protection, preservation or improvement of the trust estate whenever in their judgment advisable, and as security to mortgage or pledge any real or personal property forming a part of the Fund upon such terms and conditions as they deem advisable;
- (f) To vote in person or by general or limited proxy with respect to any shares of stock or other securities held by them; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of any corporation in which the Fund may have any interest, or to the sale, lease, pledge or mortgage of any property and to take any steps which they may deem necessary or proper to enable them to obtain the benefit of any such transaction;
- (g) To allocate stock dividends, whether or not of the same corporation, and any other dividends paid in property other than cash, or rights to subscribe to additional stock or other property, or shares of stock received as a result of a stock split, spin-off or other corporate distribution to principal, regardless of any statute or presumption to the contrary;
- (h) To hold investment in the name of a nominee;

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- (i) To execute and deliver any and all instruments in writing which the Trustees may deem advisable to carry out of the foregoing powers. No party to any such instrument in writing signed by the Trustees shall be obliged to inquire into its validity, or be bound to see to the application by the Trustees of any money or other property paid or delivered to the Trustees by such party pursuant to the terms of any such instrument;
  - (j) To enter into an investment management agreement with a financial institution for the management, investment and reinvestment of the Fund, subject to the direction and approval of the Trustees; and
  - (k) In general, to exercise any and all rights or powers in the management of the Fund which any individual could exercise in the management of property owned in his own right.
- 2) The decision of the Trustees with respect to the exercise or non-exercise by them of any discretionary power hereunder, or the time or manner of the exercise thereof, made in good faith, shall fully protect the Trustees and shall be conclusive and binding upon all persons interested in the Fund. All powers granted to the Trustees shall apply to accumulated income as well as to principal.

## ARTICLE VI

### *Amendment and Termination*

- 1) This Fund shall be perpetual, subject only to its termination by a three-fourths (3/4) vote of the full number of Trustees and of the Executive Committee of the Association. Upon termination, the Fund shall revert to the Association for the purposes set forth in Article I hereof so long as the Association maintains a Guardianship Program.
- 2) The provisions of this instrument may be amended or modified by a vote of two-thirds (2/3) of the Trustees, and shall become effective, when ratified by a three-fourths (3/4) vote of the full membership of the Executive Committee of the Association, except there shall be no amendment to ARTICLE I which would divert any part of the Fund to any purpose other than for the benefit of the Guardianship Program of the Association.

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## ARTICLE VII

### Miscellaneous


- 1) No modifications or amendments made herein to the predecessor Fund Agreement dated the 19th of July 1972, as amended, shall in any way adversely affect any fund created pursuant to the aforementioned predecessor Agreement.
- 2) This Agreement and the Trust hereby created shall be governed, construed, administered and regulated in all aspects under the laws of the State of New York.

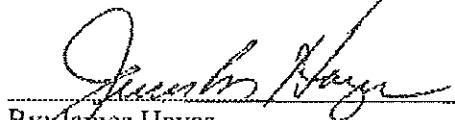
IN WITNESS WHEREOF, this instrument has been duly executed by the respective parties here-  
to as of the day and year first above written.

NYSARC, INC.

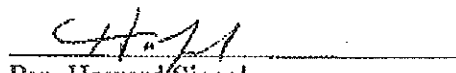
ATTEST:

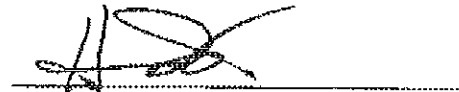
Secretary

  
By: Warren H. Heilbronner  
As: Trustee

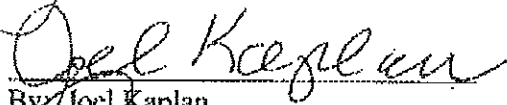
  
By: James Hayes  
As: Trustee


  
By: Sonia Crannage  
As: Trustee

  
By: Howard Siegel  
As: Trustee

  
By: Harvey Platt  
As: Trustee

  
By: John Schuppenhauer  
As: Trustee

  
By: Joel Kaplan  
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By: Edward Wilcenski  
As: Trustee