

Family Information Brochure

Professional's Edition

The NYSARC Trust and Trustees' Services



A service provided for the benefit of people who have mental retardation or other developmental disabilities and their families in furtherance of NYSARC's continuing mission.

Family Information Brochure
Professional's Edition

The
NYSARC
Trust
and
Trustees' Services

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The NYSARC Trust

and Trustees' Services

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Please call the NYSARC, Inc. office at (518) 439-8311 if you have any questions regarding the information provided in this booklet.

Nothing contained herein shall constitute legal advice. Please consult an attorney prior to signing any trust documents.

GLOSSARY OF TERMS

Beneficiary:

The person with a disability for whose benefit a trust or insurance policy has been established. The beneficiary must have a diagnosis of mental retardation or other developmental disability in order to be eligible to establish an account with The NYSARC Trust.

Bequest:

A gift of personal property made through a will.

Corpus:

Corpus is Latin for “body”, but here it means the money itself, or the bonds, stocks, life insurance policies or other assets you wish to give to the Trustee for the benefit of the beneficiary.

Devise:

A gift of real property made through a will.

Developmental Disabilities:

A person having an impaired ability to understand and appreciate the nature and consequences of decisions, and which result in such person being incapable of managing himself or herself and/or his or her affairs by reason of such developmental disabilities and that such condition is permanent in nature or likely to continue indefinitely, and whose disability:

- 1) is attributable to cerebral palsy, epilepsy, neurological impairment, autism or traumatic head injury;
- 2) is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons; or
- 3) is attributable to dyslexia resulting from a disability described in subdivision one or two of this section or from mental retardation; and
- 4) originates before such person attains age twenty-two provided, however, that no such age of origination shall apply for the purposes of this article to a person with traumatic head injury.

(As defined by Section 1750-a of the Surrogate's Court Procedure Act)

Discretionary Powers:

Powers that provide a trustee many options in managing trust assets in order to accommodate varying situations.

GLOSSARY OF TERMS

Donor, Grantor, Settlor:

The person who creates the trust. Parents are most frequently the ones who establish a trust for the benefit of their child with a disability.

Executor/Executrix:

The person responsible for collecting, maintaining, and distributing the assets of an estate in accordance with the terms of the will. A male is referred to as an Executor and a female is referred to as an Executrix.

Fiduciary:

A person or institution that manages money or property for another and who must exercise a standard of care in such management activity which is imposed by law or contract (e.g. a Trustee).

Grantor, Settlor, Donor:

The person who creates the trust. Parents are most frequently the ones who establish a trust for the benefit of their child with a disability.

Inter vivos Trust:

A trust which is established by the grantor during his or her lifetime and which becomes effective during the lifetime of the grantor. An Inter vivos trust can terminate on the death of the grantor, during the grantor's lifetime or at some other designated time.

Intestate:

Dying without leaving a valid will. If a person dies without a will, the courts will divide his/her assets according to State law.

Irrevocable Trust:

A trust that the settlor or grantor cannot alter or terminate after it has been created.

Mental Retardation:

Sub average intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior. (As defined in Mental Hygiene Law, Article 1.03).

Pooled Fund:

The pooling of monies by multiple beneficiaries for investment purposes. A pooled fund can be established and managed by a non-profit association, such as NYSARC, Inc. Separate accounts for each beneficiary are maintained.

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Remainderman:

The person(s) who receives the remaining assets of a trust at the trust's termination.

Self-settled Trust:

A Self-settled Trust is a type of Supplemental Needs Trust which is an inter vivos or living trust in which the beneficiary's own assets are used to fund the trust. Typically the monies used to fund the trust are received by a person with a disability as a result of a court order, inheritance, life insurance payout, or a medical malpractice or personal injury action.

This type of trust is established for the benefit of an individual with disabilities and is funded by that person's own assets. This is commonly referred to as a "payback", "self-settled" or "OBRA Trust" which was authorized by federal legislation entitled the Omnibus Budget Reconciliation Act of 1993. Funds remaining in this type of trust at the beneficiary's death must be repaid to the state for medicaid costs paid to or on behalf of the beneficiary, unless the trust, is a "pooled" Self-settled Trust, described below.

In addition to authorizing "payback" trusts, federal and state legislation also authorized the establishment of pooled, Self-settled Supplemental Needs Trusts, often referred to as "pooled trusts." This second type of trust must be created and managed by a non-profit corporation. NYSARC has created two such pooled trusts (The NYSARC, Inc. Community Trusts), which are available to residents of New York State who have a disability and who have resources of their own that can be used to fund the trust. Funds remaining in a pooled trust at the death of the beneficiary must remain with the trust to be used for the benefit of other persons with disabilities.

Settlor, Grantor, Donor:

The person who creates the trust. Parents are most frequently the ones who establish a trust for the benefit of their child with a disability.

Supplemental Needs Trust (SNT):

A trust which provides funds to a fiduciary for the benefit of a person with developmental disabilities. The assets of a Supplemental Needs Trust (SNT) are not considered as "available assets or resources" for the purpose of determining whether a person shall be eligible to receive governmental benefits. SNT funds are intended to supplement and not replace governmental benefits programs such as Medicaid and SSI.

The purpose of an SNT is to enhance the beneficiary's quality of life by enabling the purchase of additional support services, social and recreational opportunities, advocacy, guardianship as well as medical services and equipment that are not otherwise covered or adequately provided through state and federal benefit programs.

An SNT may be funded by a third party, such as a parent, grandparent, friend or relative. This type of trust is commonly referred to as a "Third Party Trust."

According to New York State's Estates, Powers & Trusts Law ("EPTL") 7-1.12, a third party can establish an inter vivos or testamentary Supplemental Needs Trust for the benefit of a person with a severe and

GLOSSARY OF TERMS

chronic or persistent disability whose disability is expected to, or does require, long-term specialized services.

A Third-Party trust is to be distinguished from a Self Settled Trust, because upon the death of the person with a disability, the remainderman can be whomever the creator of the Trust determines.

Testamentary Trust:

A trust established under a will to take effect after the death of the testator or testatrix (the person making the will).

Trust:

A legal device created by an individual, called the “settlor, grantor or donor”, who places money or other property in the hands of a fiduciary (the “trustee”). The money or property placed in the trust can be used only for the benefit of a certain named individual (the “beneficiary”).

Trustee:

A person or a legally established and permitted entity who has legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to the beneficiary.

FREQUENTLY ASKED QUESTIONS

Is a Last Will and Testament necessary if I have created an Inter Vivos Trust?

Yes. Even if a trust has been established and funded during an individual's life, the person who established the trust may have other assets, or not know exactly what assets they will own when they die. These other assets should be disposed of by a Last Will and Testament. Otherwise, the beneficiary of the trust may inherit these assets through intestacy, which could interfere with that individual's government benefits.

Will money, personal property or real property left directly to a person with a disability affect his/her public assistance benefits?

Yes. Any money, personal or real property will be considered resources, which may result in the loss of government benefits.

Should money be left in a bank account IN TRUST for a person with disabilities?

No. Such a bank account arrangement is known as a "Totten Trust". A problem with this type of banking arrangement is that upon the death of the person named on the bank account the account will be treated as if it were left directly to the person with a disability. This could interfere with the individual's government benefits.

Does NYSARC, Inc. need to be named Guardian of the person of the beneficiary in order to use The NYSARC Trust?

No. While some of the people for whom NYSARC, Inc. has been appointed Guardian of the person are also beneficiaries of a fund administered by **The NYSARC Trust**, there is no requirement for such an arrangement. In many cases a family member is the Guardian of the person and **The NYSARC Trust** serves as a Trustee of the property.

If a gift is made to The NYSARC Trust, can additional money or property be added at a later time?

Yes. Additional monies or property may be added to the Funds at anytime by gifts from relatives or friends, or through a bequest in a Last Will and Testament.

Who can contribute to The NYSARC Trust on behalf of a Trust beneficiary?

Any parent, relative or friend of a person with disabilities can give or leave money for the benefit of the person for whom a fund has been established.

What is the minimum amount of money that is needed to setup an account under The NYSARC Trust Unrestricted Fund?

The Trustees will accept any funding amounts of \$25,000 or more. In the event a gift is less than \$25,000, the Trustees have the discretion to make special arrangements.

Can property be given to The NYSARC Trust?

Yes, tax exempt securities and even certain types of personal property, such as works of art or real property, can be given to the Unrestricted Fund or to the Exempt Fund subject to approval by Trustees.

FREQUENTLY ASKED QUESTIONS

Can The NYSARC Trust be designated as the beneficiary of a Life Insurance Policy for the benefit of a person with disabilities?

Yes. This is one of the best ways to ensure that adequate funds will be available for the benefit of a person with disabilities.

Who manages The NYSARC Trust?

NYSARC, Inc. appoints a minimum of five and maximum of nine individuals, who may be attorneys, financial planners, other professionals and parents of individuals with disabilities to act as Trustees. All monies received by the Trustees will be professionally co-managed by a financial institution.

What assurance is there that the income and principal will be payable for the benefit of the person with a disability?

The ultimate responsibility for payment to each beneficiary rests with the Trustees. The Trustees, however, may rely on guidance from the Guardian of the beneficiary (if one is appointed) to determine the needs of the person. All principal is invested prudently to ensure the availability of funds to the beneficiaries.

Are the Trustees required to file any accountings?

The Trustees must annually submit a financial accounting to the Executive Committee of NYSARC, Inc. This accounting is audited by a certified public accountant who is selected by the Executive Committee of NYSARC, Inc.

Who receives reports of the beneficiary's accounts?

Every month, the Trustees prepare and submit to the Guardian of the person of each Beneficiary or, if no Guardian has been appointed, to such relative of the Beneficiary as the Trustees shall designate or the agency providing services, a statement of value of the share of the trust fund held for the Beneficiary, the income earned during the year, and the manner and amounts in which both income and principal were expended on behalf of the Beneficiary.

Is the gift or bequest tax deductible?

Gifts or bequests to the "Unrestricted Fund" are not currently tax deductible. Direct gifts or bequests to the "Exempt Fund" may be eligible for income or estate tax deductions. Check with your tax preparer or attorney concerning any income or estate tax planning.

Can arrangements be made so that the Fund will pay for funeral expenses?

Yes. Families are strongly encouraged to provide funds for funeral and burial expenses. In the absence of any financial arrangements, the Trustees are authorized to use their discretion in distributing funds for reasonable funeral and burial expenses unless the governing instrument states otherwise.

How is a gift or bequest to the "Unrestricted Fund" properly worded?

We strongly advise that an attorney be consulted when considering a gift or bequest to the Unrestricted Fund to ensure correct and appropriate wording.

OVERVIEW

The NYSARC Trust and Trustees' Services

NYSARC, Inc. (formerly known as the New York State Association for Retarded Children, Inc.), is a family-based not-for-profit, New York State corporation founded in 1949. Its mission is to assist and support children and adults with mental retardation and other developmental disabilities and their families in areas such as education, employment, family support, recreation, advocacy, housing and guardianship. NYSARC, Inc. is committed to enhancing not only the desired quality of life for persons with disabilities and their families, but in promoting autonomy, maximizing the development of individual skills, and fostering their integration into the community.

At present, NYSARC, Inc. has chapters located in almost every county in New York State. These local chapters provide a host of programs, supports and services throughout the State of New York.

In response to growing concerns commonly expressed by parents and others for safeguarding the personal and financial future of persons with mental retardation and other developmental disabilities, NYSARC, Inc. established **The NYSARC Trust** (formally known as the New York Retardate Trust) on July 19, 1972.

What Is The NYSARC Trust?

The NYSARC Trust currently consists of two active, separate and distinct funds (The Unrestricted Fund and The Exempt Fund). The Unrestricted Fund enables parents, relatives and friends to leave modest to large sized sums of money or other property for the benefit of a person with a developmental disability. Money or property can be transferred to this fund either through an inter vivos transfer during the Grantor's life or through a testamentary transfer at death. The Exempt Fund, was established primarily to benefit and support NYSARC, Inc.'s Corporate Guardianship Program

NYSARC has operated a trust service continuously since 1972. Its purpose is to provide a vehicle for leaving funds to children and adults with mental retardation or other developmental disabilities without negatively affecting their eligibility for government benefits, such as SSI, Medicaid, and state or federally funded residential and day programs.

One of the main benefits of a Supplemental Needs Trust is to enhance the quality of life for a beneficiary by providing for the purchase of additional support, services, therapies and other items that are not covered by nor provided adequately for by available government programs. The NYSARC Trust provides a financial vehicle to meet both the anticipated and unforeseen future needs of persons with disabilities.

Experience has shown that parents who know the capabilities and needs of their child may be unaware of the legal devices available to meet those needs. Attorneys who may be knowledgeable in estate planning may be unaware of the differing needs of persons with disabilities. Only through a realistic appraisal of the individual's needs and the retention of an attorney knowledgeable and experienced in estate planning for persons with disabilities can a parent, sibling or other relative be assured that his/her family member will receive the best available assistance and protection for their financial future.

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Estate planning for persons with disabilities can range from simply creating a Last Will and Testament containing special trust provisions, to a complex estate planning arrangement involving a will, an inter vivos trust, a life insurance trust, other estate planning techniques, and even guardianship planning. At a minimum, families should take steps to secure the financial future of their loved ones. The NYSARC Trust may be a vehicle to be considered in formulating an appropriate estate plan.

The NYSARC Trust provides a means by which parents, family members and friends of persons with mental retardation or other developmental disabilities can avoid extraordinary expenses of trust administration during their lifetime. The NYSARC Trust does not pay any commissions to its Trustees for their services. This allows a family member with developmental disabilities to benefit more fully from the income and principal contributed to the Trust without having to spend precious resources on Trustee services.

Another distinctive feature of the NYSARC Trust is that the Grantor may select who will receive the remainder of any assets held in the beneficiary's trust account upon the death of the person with disabilities (the beneficiary) subject to certain provisions which are discussed later. In the absence of any designation of the remainder, any remaining balance will be made payable to The NYSARC Trust-Exempt Fund of the Association to be used for the benefit of its Guardianship Program.

A third significant benefit of using the NYSARC Trust is that the Trustees are a group of highly dedicated individuals who possess a working knowledge of the needs and abilities of persons with developmental disabilities. Such expertise provides a helpful contribution to a beneficiary's overall quality of life.

Furthermore, each gift or bequest, regardless of size, receives the same investment management supervision from the date of contribution. For parents that do not have other children or relatives that could act as an independent Trustee, the **NYSARC Trust** provides a level of continuity and financial security for their loved ones.

In summary, there are many benefits associated with using the **NYSARC Trust** to meet the unique needs of persons with disabilities, including:

- 1) the provision of Trustee services to administer funds of modest size;
- 2) continuity of financial management;
- 3) Trustees who are knowledgeable of the needs of persons with mental retardation and other developmental disabilities;
- 4) no Trustee commissions; and
- 5) flexibility to decide who shall be the remainder beneficiary(ies) upon the death of the disabled family member.

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Unrestricted Fund

The Unrestricted Fund accepts gifts or bequests, both testamentary and inter vivos, of \$25,000 or more from parents, relatives or friends for the benefit of a designated beneficiary with mental retardation or other developmental disabilities. The entire income and principal from such gift or bequest may be paid or applied as directed by the donor either monthly, quarterly or annually at the discretion of the Trustees for the benefit of a person with developmental disabilities. The Trustees make these distribution decisions in consultation with the guardian, if any, or interested family members or service providers. However, it is important to remember that the ultimate decision with respect to distributions remains in the sole discretion of the Trustees. This discretion may be subject to any limiting provisions contained in the instrument used to make the gift or bequest. Additionally, the Trustees may pay any Court approved fees and reasonable out-of-pocket expenses incurred by any Court appointed Guardian in the administration of the Guardian's duties.

Upon the death of the beneficiary in lieu of commissions being charged during the existence of the account, \$25,000 of the remaining principal, or the balance thereof if less than \$25,000, shall be paid to the Exempt Fund (described in a subsequent section) for the benefit of the Guardianship Program of NYSARC, Inc. The excess of any principal amount over \$25,000 will be paid to whomever the grantor directs in the trust instrument or will, which might include the Exempt Fund, surviving children, relatives, NYSARC or other organizations that the Grantor may have designated.

Exempt Fund

The Exempt Fund is a fully tax exempt fund that was created for the sole benefit of the Guardianship Program of NYSARC, Inc. Gifts or bequests to this Fund are tax deductible to the donor for income, gift and/or estate tax purposes to the extent permitted by law. Please consult your tax advisor for advice concerning contributions to this Fund. All monies contributed to this Fund are used to support the Guardianship Programs, and to meet the expenses of administering the Funds, which include bookkeeping and accounting services as well as Trustee expenses.

NYSARC, Inc., through its chapters, initially provided more than \$50,000 for the establishment of this Fund in order to ensure that no expenses other than investment expenses of the Unrestricted Fund would be chargeable against any of the income earned for the various individual beneficiaries.

Trustees

A board of no more than nine (9) Trustees (which may include attorneys, financial planners, parents and other professionals) is charged with the administration of the Trust. The Trustees are appointed by the Executive Committee of the Board of Governors of NYSARC, Inc. The Trustees carry out the policies set forth in the trust agreements and work closely with NYSARC, Inc.'s professional staff as well as with employees of other agencies operating similar programs. An annual budget is prepared by the Trustees and the Funds of the NYSARC Trust are audited annually by a Certified Public Accountant. In addition, the Trust, as required by law, files all necessary annual statements and reports with the relevant federal

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and state governmental agencies. While the Trustees are not guardians, they have a fiduciary duty to administer the Trust and make disbursement decisions in the best interest of the Trust beneficiaries. All decisions made by the Trustees are subject to the terms of the Trust and are further subject to any specific terms of a particular gift or bequest made by the Grantor or included in a Last Will and Testament giving rise to any bequest. The policy of the Trustees is to make the wisest possible use of the funds at their disposal for the benefit of individuals with mental retardation or other developmental disabilities.

The NYSARC Inc. Community Trusts *(Documents Available Upon Request)*

In addition to the NYSARC Trust previously referenced in this document, NYSARC, Inc. offers persons with disabilities and their families other Trust planning tools, such as the NYSARC, Inc. Community Trusts. These Trusts are pooled trusts created and managed by NYSARC, Inc., which qualify as Supplemental Needs Trusts for the benefit of people with disabilities, and which are funded with the personal assets of the person with disabilities. (They are typically referred to as a Self-settled Supplemental Needs Trusts).

The purpose of a Self Settled Supplemental Needs Trust is to permit an individual with disabilities to protect personal assets while remaining eligible for governmental assistance programs. Without a Supplemental Needs Trust an individual with disabilities could be forced to spend the majority of his/her assets in order to remain eligible for governmental assistance. The Community Trusts provide a vehicle for an individual who receives an outright inheritance, an award from a lawsuit, or lump sum payment from Social Security, or income from other sources to effectively shelter that money, while remaining fully eligible for governmental benefits.

If you or your attorney would like further information about the NYSARC Inc. Community Trusts, please contact the NYSARC office at (518) 439-8311.

Conclusion

The use of a trust fund can be an effective tool in estate planning for families with young or adult children with disabilities. This is especially true when individuals with developmental disabilities rely on government entitlement programs to meet their basic needs. The use of these trust vehicles will assist in supplementing any public benefits which are being received. The additional financial security derived from using these long term planning tools can provide a person with developmental disabilities with a greater opportunity to lead a more complete and fulfilled life.

SAMPLE FORM OF GIFTS

While Living: Through a Trust (referred to as Inter-vivos Trusts):

Gift To Unrestricted Fund:

“Grantor hereby transfers and sets over unto the Trustees of The NYSARC Trust, (Unrestricted Fund) as Trustee for the benefit of _____, the beneficiary of this Supplemental Needs Trust, the sum of \$ _____ to be held In Trust.

Said funds to be held In Trust for the uses and purposes and upon the terms contained in The NYSARC Trust between the Trustees and NYSARC, INC. dated July 19, 1972, as amended, and further subject to the following terms and conditions. *(Attorneys may wish to add specific clauses with respect to their client's wishes.)*

Upon the death of the said beneficiary, the principal and income then remaining, if in excess of \$25,000.00, shall be paid as follows:

_____”

***Nothing contained herein shall constitute legal advice.
Please consult an attorney prior to signing any trust documents.***

Gift To Exempt Fund:

Gifts during an individual's lifetime to the Exempt Fund may be made by sending a check or transferring securities to The NYSARC Trust-Exempt Fund.

SAMPLE FORM OF GIFTS

After Death: In a Last Will and Testament; (also referred to as Testamentary Trusts)

Gift To Unrestricted Fund:

“I give and bequeath (the sum of \$ _____ OR ____%) of my estate to the Trustees of The NYSARC Trust, (Unrestricted Fund) as Trustee for the benefit of _____, the beneficiary of this Supplemental Needs Trust.

Said funds to be held In Trust for the uses and purposes and upon the terms contained in The NYSARC Trust between the Trustees and NYSARC, INC. dated July 19, 1972, as amended, and further subject to the following terms and conditions. *(Attorneys may wish to add specific clauses with respect to their client’s wishes.)*

Upon the death of the said beneficiary, the principal and income then remaining, if in excess of \$25,000.00, shall be paid as follows:

_____,
_____”

***Nothing contained herein shall constitute legal advice.
Please consult an attorney prior to signing any trust documents.***

Gift To Exempt Fund:

I give and bequeath the sum of \$ _____ Dollars (\$____) to The NYSARC Trust-Exempt Fund.

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THE NYSARC TRUST

(A Fund for Persons with Disabilities)

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The NYSARC Trust Trustees' Service Agreement

UNRESTRICTED FUND

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 - UNRESTRICTED FUND**.

WITNESSETH:

WHEREAS, the Association on July 19, 1972 established a Fund known as The NYSARC Trust -Unrestricted Fund for the receipt, management, investment and disbursement 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, 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 (hereinafter 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 - UNRESTRICTED FUND"**.

ARTICLE I

Purposes

1) The Trustees shall receive any and all gifts or bequests, both testamentary and inter vivos of \$25,000 or more as shall be paid to them as Trustees, in cash or in property, as shall be deemed expedient or proper by the Trustees.

The Trustees may in their sole discretion, and subject to the requirements provided in this Article I, receive devises and gifts of real property, both testamentary and intervivos, to be administered as fund property. The Trustees shall not accept such devises or gifts of real property unless: (a) The Trustees are given full discretion to sell the real property, or transfer title of the real property to a not-for-profit association upon the death or permanent removal of the Beneficiary from the real property and (b) any residential real property directed to be maintained by the Trustees as a home for the intended Beneficiary of the Fund, is (i) eligible and feasible to

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be converted to a residence funded by the state or other public authority and can be leased to a qualified entity to manage or (ii) that sufficient funds are provided by the Grantor or Settlor of the Fund to the Trustees to pay all reasonable and necessary costs of maintaining the real property given or devised to the Trustees and to maintain the Beneficiary while he or she is living in the residence, including real property taxes, insurance, utilities, maintenance and repairs and necessary and sufficient care and supervision of the Beneficiary of the Fund while he or she resides in the real property. It is the declared policy of The NYSARC Trust to discourage gifts and devises of real property to the Fund in favor of giving or bequeathing the real property to a nonprofit organization qualified to operate the real property as an authorized residence.

All such donations, bequests or gifts which shall be so received together with the income thereon, shall constitute a 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 the Fund for the benefit of the designated beneficiaries and remaindermen.
 - (b) To allocate the income earned thereon among the various named beneficiaries in the ratio that the value of the share of the Fund held for his or her benefit bears to the value of the Fund held for all Beneficiaries.
 - (c) Unless otherwise provided for by the governing instrument, to expend said income and principal for the benefit of the Beneficiary as the Trustees shall best determine in their sole discretion. Said payment shall ordinarily be made to the Guardian of the Person of the Beneficiary with mental retardation and other developmental disabilities but the Trustees shall not apply any of the income or principal of this Fund to supplant, impair or diminish benefits or assistance of any federal, state, county, city, or other governmental entity for which the Beneficiary may otherwise be eligible or which the Beneficiary may be receiving. The Trustees may consider the availability of all benefits from government or private assistance programs for which the beneficiary may be eligible. The Trustees, to the extent allowed by law, shall carry out the Grantor's intent to create a supplemental needs trust which conforms to the provisions of section 7-1.12 of the New York Estates, Powers and Trusts law.

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- (d) If authorized by the Donor, the Trustees may, in their sole discretion, expend all or a portion of the principal being held for a designated Beneficiary for medical and other emergency needs of said Beneficiary, so long as no portion of said principal share be used to pay reimbursement charges of a state institution, or so long as such payment shall not adversely affect the receipt of any governmental benefits unless authorized otherwise. In each case the Trustees shall be guided by the recommendations of the Guardian of the Person, if any, of the Beneficiary.
- (e) Upon the death of the designated Beneficiary, the Trustees shall value the share of the Fund held for the Beneficiary's benefit and pay over as follows:
 - (i) The first \$25,000, or the balance of the Fund if such sum shall be less than \$25,000 to The NYSARC Trust - Exempt Fund for the benefit of its Guardianship Program;
 - (ii) In the event there are sufficient funds remaining thereafter in the Beneficiary's account at the time of death and to the extent that the family members have failed to provide for funeral and burial arrangements, the Trustees, herein, are authorized to distribute funds for reasonable funeral and burial arrangements prior to the final distribution;
 - (iii) The balance of the Fund in excess of \$25,000 to such individuals or organizations and in such proportions or amounts as the Grantor or Testator may have designated in his/her gift or bequest;
 - (iv) In the absence of any designation as to the balance of the Fund, then the entire balance shall be made payable to The NYSARC Trust - Exempt Fund for the benefit of its Guardianship Program.
- 3) Each year, the Trustees shall cause to be prepared and submitted to the Guardian of the Person of each Beneficiary or, if none, to such relative of the Beneficiary as the Trustees shall designate, a statement of value of the share of the Fund held for said beneficiary, the income earned during the year there on and the manner and amounts in which both income and principal was expended.

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- 4) The Trustees shall not be liable for the application or misapplication of income or principal, if any, by the designated recipient which has been expended for the benefit of a designated beneficiary. The Trustees shall make a reasonable effort to assure the proper application of all funds disbursed for the benefit of the designated beneficiary with mental retardation or other developmental disabilities.

ARTICLE II

Trustees

- 1) There shall at all times be not less than five (5) nor 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 ($\frac{3}{4}$ ths) 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 full power to act.

UNRESTRICTED FUND

- 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 modified in the administration of the Fund 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 any prior Trustee.

ARTICLE III

Organization and Duties of Trustees

- 1) The Trustees shall elect their own Chairperson.
- 2) The Chairperson shall preside at all meetings of the Trustees, advise the Executive Committee of the Association of the status of the Fund, and in general ensure that the Fund is efficiently administered so as to best carry out its purpose.
- 3) In the event the Chairperson is not in attendance, the remaining Trustees shall choose among themselves a Chairperson for that meeting.
- 4) The Trustees shall meet as they determine to be necessary but in no event shall they meet 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 decision or take any action but any decision or action may be upon written documents 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.

UNRESTRICTED FUND

- 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, said administrative budget to be funded by the NYSARC Trust - Exempt Fund.

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 of this Trust; 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. 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 conclusive evidence of 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 monies, 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 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;

UNRESTRICTED FUND

- (b) To invest and reinvest in any property, real, personal and mixed and where 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 investments 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 monies 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 Fund 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 may deem advisable;
- (f) To allocate capital gain dividends of regulated investment companies, 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 stock split, spin-off or other corporate distribution to principal, regardless of any statute or presumption to the contrary;
- (g) To execute and deliver any and all instruments in writing which the Trustees may deem advisable to carry out any 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 them by such party pursuant to the terms of any such instrument;

UNRESTRICTED FUND

- (h) 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;
 - (i) In general, to exercise any and all rights or powers in the management of the Fund authorized by Article 11 of the Estates, Powers, and Trusts Law of the State of New York, and which any individual could exercise in the management of property owned in his own right;
 - (j) 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; and
 - (k) To hold investment in the name of a nominee.
- 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 them 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 ($\frac{3}{4}$ ths) vote of the full number of Trustees and of the Executive Committee of the Association. Upon termination no part of the Fund shall revert to the general use of the Association, but shall be completely disbursed for the purposes set forth in ARTICLE I hereof.
- 2) The provisions of this instrument may be amended or modified by a vote of two-thirds ($\frac{2}{3}$ rds) of the Trustees, and shall become effective, when ratified by a three-fourths ($\frac{3}{4}$ ths) 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 Funds to any purpose other than for

UNRESTRICTED FUND

the benefit of the designated Beneficiaries with mental retardation and other developmental disabilities and the Association as remainderman.

ARTICLE VII

Disclosure of Potential Conflicts of Interest

There may be a potential conflict of interest in the administration of the Fund since the Association may retain some of the funds remaining in the Fund at the time of death of the beneficiary for expenditures for the purposes and programs of the corporation and its chapters. Any Donor participating in the NYSARC Trust - Unrestricted Fund hereby waives any and all claims against the Trustees on account of self-dealing, conflict of interest or any other act. The Trustees shall not be liable to the Donor or to any party for any act of self-dealing or conflict of interest resulting from their affiliations with the Association or with any Beneficiary or constituent agencies and/or chapters.

ARTICLE VIII

Miscellaneous

- 1) No modifications or amendments made herein to the predecessor 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 Fund hereby created shall be governed, construed, administered and regulated in all respects under the laws of the State of New York. The situs of the Fund with in the State of New York for such purposes shall be the County of Albany.

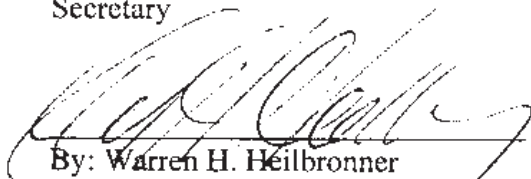
UNRESTRICTED FUND

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

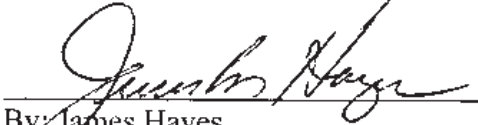
NYSARC, INC.

ATTEST:

Secretary



By: Warren H. Heilbronner
As: Trustee



By: James Hayes
As: Trustee



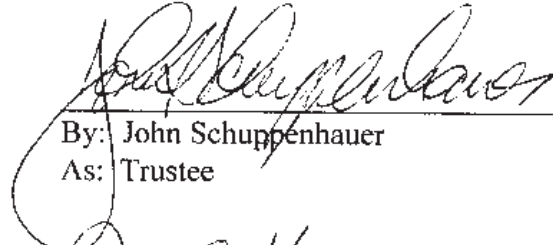
By: Sonia Crannage
As: Trustee



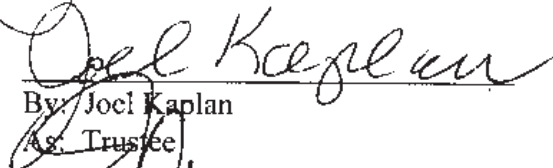
By: Howard Siegel
As: Trustee



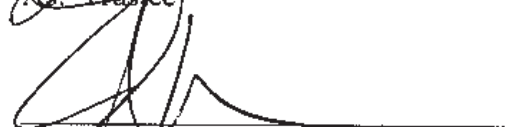
By: Harvey Platt
As: Trustee



By: John Schuppenhauer
As: Trustee



By: Joel Kaplan
As: Trustee



By: Edward Wilcenski
As: Trustee

EXEMPT FUND

THE NYSARC TRUST

(A Fund for Persons with Disabilities)

EXEMPT FUND

The NYSARC Trust Trustees' Service Agreement

EXEMPT FUND

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

EXEMPT FUND

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;

EXEMPT FUND

- (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.

EXEMPT FUND

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 investment 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

EXEMPT FUND

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.

EXEMPT FUND

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

EXEMPT FUND

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;

EXEMPT FUND

- (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.

EXEMPT FUND

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.

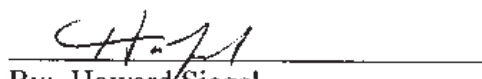
ATTEST:

Secretary


By: Warren H. Heilbronner
As: Trustee

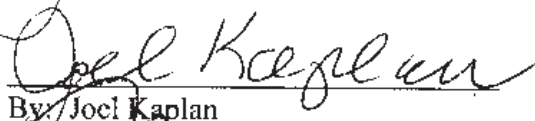

By: James Hayes
As: Trustee

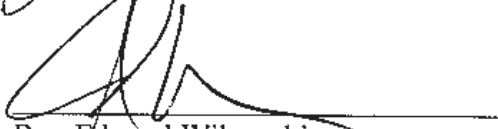

By: Sonia Crannage
As: Trustee


By: Howard Siegel
As: Trustee


By: Harvey Platt
As: Trustee


By: John Schuppenhauer
As: Trustee


By: Joel Kaplan
As: Trustee


By: Edward Wilcenski
As: Trustee

NYSARC, Inc.
393 Delaware Avenue
Delmar, New York 12054

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Facsimile: 518-439-1893
E-Mail: nysarc@nysarc.org
Web: www.nysarc.org

