

**THE NYSARC TRUST**

*(A Fund for Persons with Disabilities)*

**UNRESTRICTED FUND**

*NYSARC, Inc.*  
29 British American Boulevard  
Latham, New York 12110

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Revised 2019

**The NYSARC Trust  
Trustees' Service Agreement**

**UNRESTRICTED FUND**

**As Amended**

**THIS AGREEMENT**, made the 16th day of July, 2019 by and between NYSARC, Inc. , a New York Corporation having its principal office at 29 British American Boulevard, Latham, New York 12110 (hereinafter called "**Association**") and Warren H. Heilbronner, Deborah S. Ball, Katharine Wilson Conroy, Sonia B. Crannage, Lisa K. Friedman, James C. Moragne, John A. Schuppenhauer, John J. Sherman, and Edward V. 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 NYSARC, 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 intellectual and/or other developmental disabilities; and

**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 intellectual and/or 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 intellectual and/or 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 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 necessary real property costs of 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, if any, of the person of the Beneficiary, with intellectual and/or 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.
- (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 thereon and the manner and amounts in which both income and principal was expended.

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 intellectual and/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 (¾ths) 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.

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.
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 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 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;
  - (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;

(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;

(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 the benefit of the designated Beneficiaries with intellectual and/or other developmental disabilities and the Association as remainderman.

## **ARTICLE VII**

### ***Disclosure of Potential Conflicts of Interest***

1. 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 19<sup>th</sup> 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 within the State of New York for such purposes shall be the County of Albany.

**IN WITNESS WHEREOF**, this instrument has been duly executed by the respective parties

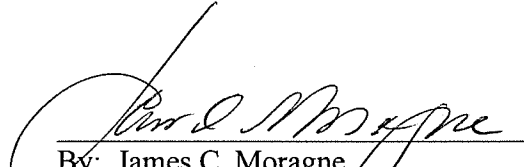
hereto as of the day and year above written.

NYSARC, INC.

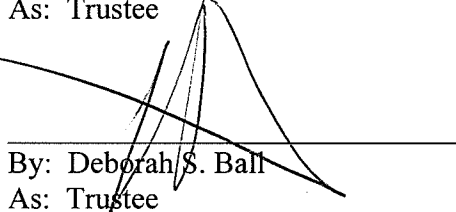
ATTEST:

  
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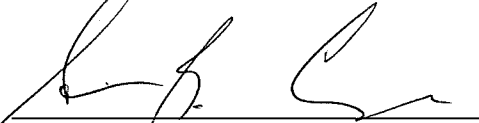
By: Warren H. Heilbronner  
As: Trustee

  
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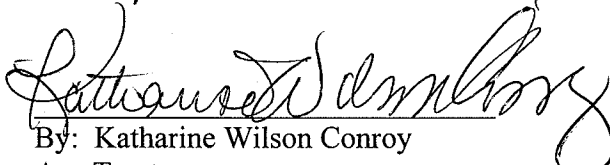
By: James C. Moragne  
As: Trustee

  
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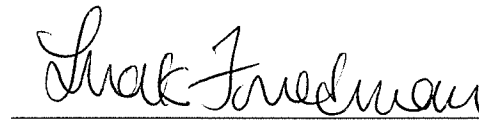
By: Deborah S. Ball  
As: Trustee

  
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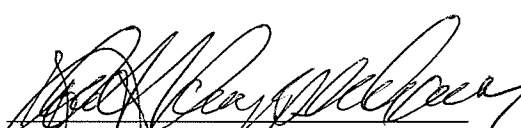
By: Sonia B. Crannage  
As: Trustee

  
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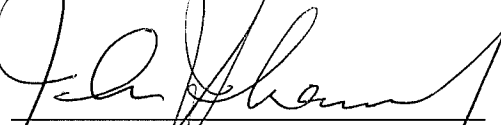
By: Katharine Wilson Conroy  
As: Trustee

  
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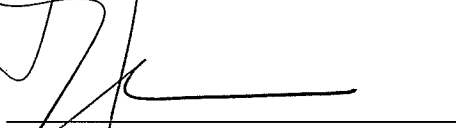
By: Lisa K. Friedman  
As: Trustee

  
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By: John A. Schuppenhauer  
As: Trustee

  
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By: John J. Sherman  
As: Trustee

  
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By: Edward V. Wilcenski  
As: Trustee