

# DECLARATION of TRUST

MASTER TRUST



United Community Services  
Disability Pooled Trust

**RESTATED DECLARATION OF TRUST**, dated the 6th day of August, 2013, by United Community Services of Greater New York, Inc., (also doing business as United Community Services of Boro Park), a New York not-for-profit corporation having its principal place of business at 1575 50<sup>th</sup> Street, 3<sup>rd</sup> Floor, Brooklyn, NY 11219, (“UCS of Greater New York” or “Boro Park”) as Settlor, and Shlomo Torn, Elimelech Torn, and Isaac Soskin as Trustees (the “Trustees”).

**WHEREAS**, the United Housing and Community Services Corporation (“UCS”), as Settlor, established the UNITED COMMUNITY SERVICES DISABILITY POOLED TRUST dated June 19, 2009 (“the Trust Agreement”, “the Trust”, or “Master Trust”), and

**WHEREAS**, pursuant to a resolution dated June 27, 2011, the Board of Directors of UCS resolved to and did amend the Trust Agreement to provide for UCS of Greater New York’s continued management in accordance with the Trust Agreement, and

**WHEREAS**, on this 6th day of August, 2013, UCS of Greater New York restates the Trust Agreement for the purpose of establishing a trust to be used by people with disabilities (as hereinafter defined) and for the purposes of providing a service to people with disabilities that is not readily available or well known in certain areas, pursuant to the authority under Article SEVENTH of the Trust Agreement that provides,

The Board of Directors of Boro Park shall have the right and power to amend the provisions of this Trust and the Joinder Agreement provided, however, that any such amendment shall not:

- (a) alter the purpose or objective of the Trust;
- (b) make gifts revocable that are otherwise irrevocable under this Trust or the Joinder Agreement;

(c) adversely affect a prior executed Joinder Agreement.

**NOW THEREFORE**, the UCS of Greater New York hereby declares the following:

**ARTICLE 1**  
**Trust Establishment, Purpose and Disposition.**

1.1 Name of Trust.

The name of the Trust shall be UCS DISABILITY POOLED TRUST, a supplemental needs trust created pursuant to federal and state laws under the Omnibus Budget Reconciliation Act of 1993 (“OBRA 1993”). Pursuant to OBRA 1993, persons with disabilities (as defined herein) shall be able to put assets in a pooled supplemental needs trust so long as said trust is established and managed by not-for-profit institutions. UCS of Greater New York is a New York not-for-profit corporation that is recognized under Internal Revenue Code 501(c) (3) as a tax-exempt entity.

1.2 Establishment of Trust

This Trust is established pursuant to, and is intended to comply with the provisions of 42 USC 1396 (p) (d) (4) (commonly known as OBRA ‘93), New York Social Services Law Section 366 (2) (b) (2) (iii) (B), the New York State Department of Health and rules and regulations promulgated thereunder and shall be construed accordingly. The Trustees shall provide to the New York State Department of Social Services and/or the appropriate social services district of the State of New York such notices as are required by statute and regulation.

1.3 Purpose of the Trust.

The express purpose of this Trust is to provide for the collective management and distribution of the Trust Estate on behalf of eligible beneficiaries (the “Disabled Beneficiary” referred to in the Joinder Agreement, otherwise referred to as “Beneficiary” in this Trust

Agreement) who are disabled as defined in Social Security Law §1614 (a)(3) (42 U.S.C. §1382c (a) (3)) for whom trust accounts (hereinafter called “Sub-Trust Account”) are established and upon the death of the Beneficiary, the funds that are received by the Trust shall be retained by the Trustees of the UCS DISABILITY POOLED TRUST and administered by the Trustees to further the express purposes of the Trust as more fully stated below. This Trust is intended to provide, in the sole and absolute discretion of the Trustees, extra and supplemental services and benefits for the care, support, comfort, education and training of the Beneficiaries in addition to and over and above benefits they already receive, are entitled to receive or may receive or be entitled to receive in the future as a result of their present or future mental retardation or physical, psychological or developmental disabilities from any federal, state or local government program, agency or department.

1.4 Except as the Donor’s (“Donor” shall mean the person who is contributing property to the Trust) intent is otherwise expressed in the Joinder Agreement (a sample of the Joinder Agreement is attached hereto), the Donor declares that in creating the Sub-Trust Account provided for the Beneficiary, the Donor’s primary purpose is to benefit the Beneficiary for all reasonable expenditures, as to both income and principal and not to preserve the principal for the benefit of any remainderman. The Donor directs that this purpose be carried out in determining any questions which may arise between the interests of the Beneficiary and the remainderman.

1.5 It is the Donor’s intent that the Beneficiary is treated as a full family member with the opportunity to participate in family activities, lifestyles and purchases, as long as those purchases are for the benefit of the Beneficiary. Therefore, it is Donor’s intent that the Trustees have the broadest powers to encourage Beneficiary’s family involvement, and not be hampered nor prevented from making any expenditure which is appropriate for the benefit of the Beneficiary,

even though other family members may incidentally benefit. Nothing benefits the Beneficiary exclusively, because he/she is a beloved member of a family unit. Notwithstanding the above, the Trustees retain the full discretion to determine the appropriateness of said expenditures.

1.6 Any and all amounts remaining in the Sub-Trust Account upon the death of any Beneficiary shall be credited to the “Remainder Sub-Trust Account” (the separate account maintained by the Trustees to which shall be credited any and all amounts remaining in a separate account maintained for the Beneficiary upon the death of said Beneficiary) which amounts may be used by the Trustees of the Trust for the purpose of providing direct supplemental needs assistance to any individual who is disabled pursuant to Social Security Law Section 1614(a) (3) and 42 USC 1382c (a) (3), whether or not such individual is a current beneficiary of the Trust. Amounts in the Remainder Sub-Trust Account shall also be available to the Trustees of the Trust for the purpose of providing indirect supplemental needs assistance to or on behalf of individuals with disabilities. Such indirect expenditure(s) may consist of, but are not limited to, education, training, advocacy and such other incidental services or products which meet the need(s) of any current or potential Beneficiary of the Trust or has the effect of heightening the awareness of the general community to the special needs of individuals with disabilities, or distributions to any other 501(c)(3) organization that provides any of the above services for the benefit of individuals with disabilities. Amounts in the Remainder Sub-Trust Account shall also be available to the Trustees of the Trust to meet any administrative and/or operating expenses incurred by the Trust.

1.7 To the extent that amounts remaining in a Beneficiary’s Sub-Trust Account upon the death of the Beneficiary are not retained by the Trust and credited to the Remainder Sub-Trust Account, to be used in furtherance of the purpose of the Trust, the Trustees shall pay to New York State from such deceased Beneficiary’s Sub-Trust Account any remaining amounts equal to

the total amount of medical assistance paid on behalf of the Beneficiary under New York State's plan pursuant to 42 USCS §§ 1396 et seq.

#### 1.8 Eligibility

(a) Eligible Beneficiaries: This Trust is open to individuals, who are accepted by the Trustees in their sole discretion and who by reason of their disabilities as defined in Social Security Law Section 1614 (a)(3) and 42 USC 1382c(a)(3) shall be eligible beneficiaries of this Trust.

(b) Funding Trust Accounts: The Trust is established as of the day and year first above written. It shall be effective as to any Beneficiary upon execution of a Joinder Agreement, after proper certification by at least one of the Trustees. Upon delivery to and acceptance by the Trustees of cash, its equivalent, or then marketable securities, the Trust, as to the Beneficiary, shall be irrevocable and said property shall be non-refundable.

Deposits, in not less than \$100 increments, to fund the sub-trust account shall be accepted in the Trustees sole discretion at any time during the year. Said contributions are to be administered in accordance with the Joinder Agreement, subject to proper certification by at least one of the Trustees.

#### 1.9 Acceptance

The Settlor hereby establishes this Master Trust for the convenience of Donors, Beneficiaries and their families. If a Joinder Agreement is executed incorporating the provisions of this Master Trust by reference, and the Joinder Agreement has been approved by at least one of the Trustees, the Trustees agree to hold, administer, and distribute the income and principal of the Trust in accordance with the terms and provisions hereinafter set forth.

**ARTICLE 2**  
**Trustees and Management**

2.1 UCS of Greater New York hereby appoints Shlomo Torn, of 1251 42<sup>nd</sup> St., 5<sup>th</sup> Floor, Brooklyn, New York 11219, Elimelech Torn, of 1851 60<sup>th</sup> Street, Brooklyn, New York 11219 and Isaac Soskin, of 978 East 28<sup>th</sup> Street, Brooklyn, New York 11210 as Trustees.

2.2 UCS of Greater New York shall have the authority to appoint any one or more corporate fiduciary(ies) or person(s) as successor and/or additional Trustees. If no Trustees are acting and UCS of Greater New York has not appointed a successor Trustee within thirty (30) days of a Trustee ceasing to act, and there is no other Trustee then acting, then the successor Trustees shall be selected and appointed by a court of appropriate jurisdiction in Kings County, New York.

2.3 Any Trustee may be removed by UCS of Greater New York at any time with or without good cause. The removal of a Trustee shall be by an instrument in writing addressed to the subject Trustee and signed by the President of UCS of Greater New York.

2.4 Any Trustee may resign at any time by giving thirty (30) days written notice to the other Trustees then acting, if any, and to UCS of Greater New York. Such resignation shall become effective upon receipt thereof by the remaining Trustees then acting, if any, and UCS of Greater New York, and upon the written acceptance of the Trust by the designated successor Trustees. Upon resignation or removal, the resigning or removed Trustees shall prepare a final accounting for the approval of UCS of Greater New York, and the resigning or removed Trustees, if required, shall seek approval of such accounting by a court of appropriate jurisdiction in Kings County, New York.

2.5 A Trustee shall be entitled to such compensation as determined by UCS of Greater New York. In addition, the Trustees shall be entitled to be reimbursed for reasonable

expenses incurred by the Trustees in the administration of this Trust.

2.6 Any such successor or additional Trustees shall be deemed vested with all the duties, rights, titles and powers, whether discretionary or otherwise, as if originally named as Trustees. No successor or additional Trustees shall be personally liable for any act or failure to act of any predecessor Trustees. The successor or additional Trustees may accept the account rendered and the property delivered by the predecessor Trustees as a full and complete discharge to the predecessor Trustees, without incurring any liability for so doing.

2.7 All decisions regarding the Trust shall be made by a majority of the Trustees not disqualified to act thereon. However, insofar as third persons dealing with the Trustees are concerned, instruments of any kind (including but not by way of limitation any check, order, Joinder Agreement, demand, assignment, transfer, contract, authorization, proxy, consent, notice or waiver) need be executed by only one Trustee, and when so executed shall be fully binding as if executed by all of them.

### **ARTICLE 3** **Expenditures**

3.1 The Trustees may, at their discretion, disburse trust income or principal to purchase property or services for each Beneficiary, consistent with the purposes and objectives as referred to in this instrument. Disbursements shall be made according to the interests and locations of each Beneficiary, taking into account the services and financial resources legally available to him or her from any sources.

3.2 Notwithstanding the above, it is the further intent of the Settlor that no distribution be ordered in contravention of the intent of the Trust and of 42 U.S.C. 1396p (d) (4) (C), Social Services Law 366 (2) (b) (2) (iii) (B) and the New York Estate Powers and Trusts Law (EPTL) Section 7-1.12. This provision is intended to negate and eliminate any discretion

granted to any Court by EPTL Section 7-1.6. The Settlor intends that the funds provided by any third party be utilized for the “supplemental needs” of the Beneficiary. Settlor intends that if the Trustees receive any contributions from the Beneficiary, outright or pursuant to a Court Order, that the Trust assets are to be protected by the terms of this Trust Agreement. The Settlor and Trustees intend that the Beneficiary have the same property rights as any other person who does not have a disabling condition.

3.3 Notwithstanding the provisions above, the Trustees in consultation with the legal guardian, if any, may make distributions to meet the Beneficiary’s need for food, clothing, shelter or health care even if such distribution may result in an impairment or diminution of the Beneficiary’s receipt or eligibility for government benefits or assistance but only if the Trustees determine: (i) that the Beneficiary’s basic needs cannot be met adequately without such expenditure, and (ii) that it is in the Beneficiary’s best interests to suffer the consequent effect, if any, on the Beneficiary’s eligibility for or receipt of government benefits or assistance; provided, however, that if the mere existence of the Trustees’ authority to make distributions pursuant to this subparagraph shall result in the Beneficiary’s loss of government benefits or assistance, regardless of whether such authority is actually exercised, this subparagraph shall be null and void and the Trustees’ authority to make such distributions shall cease and shall be limited as otherwise provided herein to supplement and not supplant any government entitlement.

3.4 If the Beneficiary’s residence changes from the State of New York to another state, the Trustees have discretion to cease making distributions until appropriate arrangements for the transfer and distribution of funds by the Beneficiary, the Beneficiary’s legal guardian, or other representative can be made.

**ARTICLE 4**  
**Fees**

4.1 Each Beneficiary shall pay an initial fee to join the Trust as set forth in UCS of Greater New York's fee schedule. Beneficiaries shall also be responsible for a yearly fee to offset the costs of the yearly outside auditor's audit, a monthly fee for maintenance costs, and any and all fees which may in the future be established by Trustees and UCS of Greater New York in its discretion in accordance with the published fee schedule then in effect which is subject to and may change from time to time.

**ARTICLE 5**  
**Administrative Provisions**

5.1 Accountings:

For accounting purposes, the Trust shall be operated on a calendar year basis. The Trustees, or its authorized agent, shall maintain records for each Trust Sub-Trust Account in the name of, and showing the property contributed for, each Beneficiary. Periodic accounts not less often than annually shall be sent to each Beneficiary and/or the appropriate representatives or designees of each Beneficiary, showing additions to and disbursements from the funds held in the Sub-Trust Account for that Beneficiary during the preceding calendar year. The Trustees shall file the accounting with the appropriate court having jurisdiction over the Beneficiary as may be required and requested by the Beneficiary.

5.2. Trustees' Powers:

The Trustees shall have full power and authority in their absolute discretion, without recourse to any court or any notice whatsoever, to do all acts and things necessary to accomplish the purposes of this Trust, and to perform the Trustees' duties as such and to receive, hold, manage, and control all the income arising from such Trust and the corpus thereof

and do such other acts and things concerning the Trust as may be advisable, including, but not limited to, all powers conferred upon fiduciaries by New York's Estates, Powers and Trusts Law, as of the date of the execution of this Trust, and the powers conferred upon the Trustees by said statute are hereby incorporated into this Trust by reference.

5.3 No money or property of the Trust shall be pledged, assigned, transferred, sold in any manner, anticipated, charged or encumbered by any Beneficiary or remainderman hereunder, except by operation of law, or be in any manner liable while in the possession of the Trustees for his/her or their debts, contracts, obligations, or engagements, voluntary or involuntary, or for any claims, legal or equitable, against such Beneficiary or remainderman. No Trust property shall be available to any Beneficiary or remainderman until actually delivered to or for the benefit of him or her.

## **ARTICLE 6** **Indemnification**

6.1 No Trustee shall be liable or responsible in any way or manner unless he shall have acted in bad faith or with willful misconduct. Every action taken by a Trustee shall be presumed to be a fair and reasonable exercise of the powers and duties vested in or imposed upon such Trustee and, in the absence of affirmative evidence to the contrary, such Trustee shall be deemed to have exercised reasonable care, diligence, prudence, judgment and good faith in the administration of this trust and to have acted impartially as to all persons interested therein. In no event shall any Trustee be liable on account of any default of any other Trustee, unless liability may be imposed upon him for his own misconduct.

6.2 The Trustees shall be fully protected in acting upon any instrument, certificate or paper believed by him 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.

6.3 All persons dealing with the Trustees are released from inquiry into the decision or authority of the Trustees and to the application of any monies, securities, or other property paid or delivered to the Trustees.

6.4 The Trustees and each of his agents and employees, as well as his agents' and employees' heirs and legal and personal representatives, shall be and are hereby indemnified by the Trust and the Trust property against all claims, liabilities, fines, or penalties and against all costs and expenses, including attorneys' fees and disbursements and the cost of reasonable settlements imposed upon, asserted against, or reasonably incurred thereby in connection with or arising out of any claim, action, suit or proceeding in which he, she, or it may be involved by reason of being or having been a Trustee, whether or not he, she or it all have continued to serve as such at the time of incurring such claim, liabilities, fines, penalties, costs or expenses or at the time of being subjected to the same. However, said persons and entities, or their heirs or legal representatives shall not be so indemnified with respect to matters as to which he, she or it shall be finally determined to have been guilty of willful misconduct in the performance of any duty as such, by a court of competent jurisdiction. This right of indemnification shall not be exclusive of, or prejudicial to, other rights to which any such person or entity may be entitled as a matter of law or otherwise.

## **ARTICLE 7** **Amendment**

### 7.1 Amendment

UCS of Greater New York shall have the right and power to amend the provisions of this Master Trust and the Joinder Agreement provided, however, that any such amendment shall not:

- (a) alter the purpose or objective of the Trust;
- (b) make contributions revocable that are otherwise irrevocable under this Trust or the Joinder Agreement;
- (c) adversely affect a Beneficiary with respect to a prior executed Joinder Agreement by that Beneficiary.

#### 7.2 Death Of Beneficiary

Upon the death of the Beneficiary, amounts remaining in the Beneficiary's Sub-Trust Account shall be retained in the Remainder Sub-Trust Account by the Trustees of the Trust or by UCS of Greater New York and administered in accordance with applicable federal and New York State laws and regulations.

7.3 United Community Services of Greater New York (d/b/a UCS of Greater New York, United Community Services of Boro Park and UCS of Boro Park) is a corporation organized and operating under the not-for-profit corporation law of the State of New York. UCS of Greater New York is recognized as a qualified charitable organization under Section 501 (c) (3) of the Internal Revenue Code.

### **ARTICLE 8** **Disclosure Of Potential Conflicts Of Interest**

There may be a potential conflict of interest in the administration of the Trust since the Trustees of the Trust may retain those funds remaining in the Trust at the time of death of the Beneficiary or said funds may be distributed to UCS of Great New York for use for the further benefit of individuals with disabilities. Funds remaining in the Trust may be used to pay for ancillary and/or supplemental services for Beneficiaries and potential Beneficiaries which services may be rendered by the Trust or UCS of Greater New York. A Trustee or Trustees of

the Trust are permitted to be affiliated with UCS of Greater New York.

The Donor by executing the Joinder Agreement is aware of the potential conflicts of interest that exist in the Trustees' administration of the Trust. Any Donor executing a Joinder Agreement to this Master Trust 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 UCS of Greater New York or with any Beneficiary or constituent agencies.

**ARTICLE 9**  
**Miscellaneous**

9.1. Situs

The Trust Agreement has been accepted by the Trustees in the State of New York and will be initially administered by the Trustees as set forth under Article 2, above. The validity, construction, and all rights under the Trust Agreement shall be governed by the laws of the State of New York. The situs of this trust for administrative and accounting purposes shall be in the County of Kings, the location of the principal place of business of the Trustees and UCS of Greater New York.

9.2 Invalidity of any Provision

Should any provision of this Agreement be or come invalid or unenforceable the remaining provisions of this Agreement shall be and continue to be fully effective.

9.3. Counterparts

This Trust Agreement may be signed in any number of counterparts all of which when taken together shall constitute a fully executed agreement.

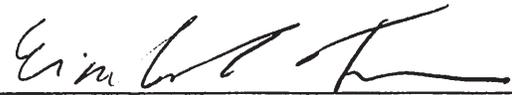
9.4. Reference to either gender herein and the use of the singular or plural shall be deemed to be interchangeably used and applicable where so ever pertinent.

IN WITNESS WHEREOF, the undersigned hereby subscribe to this Trust on the date first above written.

UNITED COMMUNITY SERVICES OF  
GREATER NEW YORK, INC., Settlor

  
\_\_\_\_\_  
By:

  
\_\_\_\_\_  
Shlomo Torn, Trustee

  
\_\_\_\_\_  
Elimelech Torn, Trustee

  
\_\_\_\_\_  
Isaac Soskin, Trustee

STATE OF NEW YORK    )  
  SS.:  
COUNTY OF Kings    )

On the 6 day of Aug., 2013, before me personally appeared Shlomo Torn, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

RACHEL SHECHTER  
NOTARY PUBLIC, State of New York  
No. 01SH6094359  
Qualified in Kings County  
Commission Expires 6/16/2015

  
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NOTARY PUBLIC

