

# Resolution and Declaration of Trust Creating “The New York Community Trust”

June 2009

THE NEW YORK  
COMMUNITY TRUST



Amended June 22, 2009

The New York Community Trust  
909 Third Avenue, New York, NY 10022  
[www.nycommunitytrust.org](http://www.nycommunitytrust.org)





WHEREAS, the history of bequests for educational, charitable and benevolent purposes has demonstrated that the welfare of mankind would have been promoted and greater good accomplished if the terms of such trusts had permitted of change in the particular objects originally chosen or in the channels selected for the application of the funds, for the reasons (1) that the passage of time, the progress of civilization and the increasing concern of the State or governmental authorities in matters affecting public welfare are constantly rendering trusts created for specific objects superfluous and literal compliance with their terms unwise, impracticable or impossible; and (2) that while in some jurisdictions the courts are clothed with power to direct that such trusts shall be administered in a manner most effectual to accomplish their general purpose, without regard to and free from any specific restriction, limitation or direction contained therein, the necessary court proceedings always involve delay and expense and are frequently contested; and

WHEREAS, never in the history of modern times has the welfare of mankind more urgently demanded the encouragement and promotion of gifts for educational, charitable or benevolent uses in accordance with a plan which shall (1) meet the changing needs for such gifts with flexibility in the power of distribution, (2) afford an opportunity alike to persons of wealth and persons of moderate means to make their several gifts to different trustees of their own selection for such purposes more effective by providing for the distribution of the income and/or principal of all of them as if an aggregate fund, (3) provide for the selection of the

beneficiaries of such gifts by an impartial and changing committee of persons chosen for their knowledge of the educational, charitable or benevolent needs of the time, and (4) safeguard and provide for the permanent security of the principal of such gifts; and

WHEREAS, it is recognized that public confidence in such a plan and in the security and impartial administration of gifts made under it will be enhanced and assured by the concerted action of the trust companies specified in Exhibit A hereof and such other trust companies or financial institutions authorized by law to accept and execute such trusts as the Distribution Committee hereinafter provided for may approve in writing and from time to time permit to join with them by the adoption of the following resolution and declaration and by filing a certified copy thereof with the Director appointed as hereinafter provided:

NOW, THEREFORE, in order to accomplish such purpose the Board of Directors of (*name of trustee bank*) do hereby adopt the following

## Resolution & Declaration:

### I

That the trust hereby provided for shall be known as “The New York Community Trust.”

### II

That (*name of trustee bank*) will accept any gift, grant, devise or bequest in trust for educational, charitable or benevolent uses and purposes contained in any instrument which shall have annexed thereto a copy of this resolution and declaration and/or shall effectually identify and incorporate the same by reference and thereby conclusively assent to and adopt (1) all the provisions herein specified, or (2) all the provisions herein specified, but express a desire of the donor (a) as to the time when and the purpose for which the principal shall be distributed, and/or (b) as to the purpose for which the income shall be used for a definite or indefinite period.

*Acceptance by  
Trustee*

Among the provisions so to be adopted shall be the following, viz.: that any such expressed desire of the donor shall be respected and observed, subject, however, in every case to the condition that if and whenever it shall appear to the Distribution Committee hereinafter referred to that circumstances have so changed since the execution of the instrument containing any gift, grant, devise or

*Special desires  
of the donor*

*Variance power*

bequest as to render unnecessary, undesirable, impractical or impossible a literal compliance with the terms of such instrument, said Committee may at any time or from time to time direct the application of such gift, grant, devise or bequest to such other educational, charitable or benevolent purpose as, in their judgment, will most effectually accomplish the general purpose expressed in subdivision (1) of Paragraph IV, without regard to and free from any specific restriction, limitation or direction contained in such instrument.

### III

The term Distribution Committee when herein employed shall be taken to mean the persons appointed as provided in Paragraph V.

All of the trust companies or other financial institutions authorized to accept and execute trusts for the purposes specified in Paragraph IV, whether originally named herein or hereafter permitted to act in concert with them as hereinbefore provided, are sometimes collectively referred to as the Trustees or severally as Trustee or one of the Trustees, but neither their concerted action hereunder nor such collective reference nor anything herein contained shall be deemed to make them or any of them co-trustees, joint tenants, or tenants in common of any estate or property given, granted, devised or bequeathed for the uses and purposes and upon the conditions herein expressed.

*Trustees not  
co-trustees*

The estate in any property, real or personal, from time to time given, granted, devised or bequeathed to any one of the Trustees for the uses and purposes, upon the conditions and subject to the provisions herein expressed, shall be deemed to

*Each trust  
an estate in  
severalty*

be an estate in severalty and shall be held and administered by the Trustee to which such gift, grant, devise or bequest shall be made. The Trustees shall have no power of disposition over, or to select or appoint the beneficiaries of, the income or principal of any such property or to allot the amount to be paid to any of them, such power of selection, appointment and allotment and the duty to exercise it being conferred and imposed upon the Distribution Committee, except as otherwise stated herein.

*Trustees have no power to select beneficiaries*

## IV

Subject to the particular terms of any gift, grant, devise or bequest as and only to the extent provided in Paragraph II:

(1) The Distribution Committee shall in each calendar year (a) appropriate the Distribution Amount (as defined in subdivision (2) of this Paragraph IV), or (b) in the absence of a Spending Policy (as defined in subdivision (2) of this Paragraph IV) the entire net income, certified by the Trustees in accordance with the provisions of subdivision (4) of this Paragraph IV for such educational, charitable or benevolent uses and purposes as will, in the absolute and uncontrolled discretion of the Distribution Committee, most effectively assist, encourage and promote the well being of mankind and primarily of the inhabitants of the community comprising the City of New York and its vicinity, regardless of race, color or creed, and, without in any way enlarging or extending the generality of the foregoing but rather in illustration and explanation thereof, for the following uses and purposes among others:

*Appropriation of Distribution Amount or entire net income each year*

*Illustrative purposes*

(a) For assisting educational, charitable, or benevolent institutions, whether supported wholly or in part by private donations or by public taxation;

(b) For promoting scientific research for the advancement of human knowledge and the alleviation of human suffering or the suffering of animals;

(c) For the care of the sick, aged and helpless;

(d) For the care of needy men, women and children;

(e) For aiding (1) individuals addicted to narcotics, drugs and intoxicating liquors, (2) released inmates of penal and reformatory institutions, and (3) wayward or delinquent persons;

(f) For the improvement of living and working conditions and protection of the environment;

(g) For providing facilities for public recreation;

(h) For the promotion of public health;

(i) For the promotion of human justice;

(j) For investigating or promoting the investigation of or research into the causes of ignorance, poverty and vice, preventing the operation of such causes, and remedying or ameliorating the conditions resulting therefrom;

(k) For the promotion of arts and culture.

*Adoption of Spending Policy*

(2) The Distribution Committee is authorized, in its absolute discretion, to adopt a policy (the "Spending Policy"), from time to time, which defines the amount of the annual distributions from the trusts of The New York Community Trust for the uses and purposes as aforesaid. Such amount (referred to herein as the "Distribution Amount") shall be defined in terms of an objective formula, determined by the Distribution Committee, applied to the net fair market value of the trust assets, valued at such time or times and in such manner

as shall be determined by the Distribution Committee. If the net income of a trust is insufficient in any year to satisfy the Distribution Amount, the amount of such insufficiency shall be paid out of the principal of the trust. If the net income of a trust is greater in any year than the Distribution Amount, the amount of such excess shall be added to the principal of the trust. This subdivision and subdivision (1) of this Paragraph IV shall override any provision of state law which redefines trust accounting income in terms of a unitrust amount (or other formula) and any provision of state law now in effect or hereafter enacted which may grant discretionary authority to a trustee to make an adjustment between principal and trust accounting income.

(3) In addition to the authority granted to the Distribution Committee by subdivision (2) of this Paragraph IV, the Distribution Committee may, by three-fourths (3/4) vote of the persons who are then members of the Distribution Committee or by a majority vote if authorized by the donor, appropriate an additional amount of principal of a trust for distribution for the uses and purposes aforesaid, but the amount of such additional principal so appropriated shall not exceed two percent of the principal of such trust (after reduction for any part of the Distribution Amount payable from principal) in any one calendar year unless otherwise provided by the donor.

(4) Each of the Trustees shall provide a statement to the Director of The New York Community Trust not less frequently than annually of the value of the principal of each trust held by the Trustee, the amount of income received by such Trustee and the expenses charged to income and principal. At the request of the Director, a Trustee shall certify

*Appropriation  
of principal*

*Trustees'  
certification  
of principal,  
income and  
expenses*

such information.

*Trustees'  
disbursement  
of principal  
and income*

(5) Each of the Trustees shall pay and disburse such portions of the net income or of the principal of the property held by them respectively at such times and in such amounts as shall from time to time be ordered or directed by the Distribution Committee or such officers to whom the Distribution Committee may delegate such authority, and in the distribution and application of funds available for distribution hereunder, payments may be made (a) to individuals, (b) to corporations, trusts, or associations maintaining facilities for any one or more of the educational, charitable or benevolent uses or purposes aforesaid, (c) to corporations, trusts, or associations already formed to distribute and apply such funds to any one or more of such purposes, or (d) to corporations, trusts, or associations formed or operated for any one or more of such purposes by the Distribution Committee, whether located in the City of New York or elsewhere; provided, however, that no funds shall be appropriated by the Distribution Committee or paid by any Trustee to any corporation, trust, or association if any director, trustee, officer, private stockholder, member or employee thereof or other individual or private person shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly educational, charitable, or benevolent purposes, or if the organization thereof for any such purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation, trust, or association, or for any of its directors, trustees, officers, private stockholders, members or employees or if it be not in good faith organized or conducted exclusively for

one or more of such purposes.

The Trustees shall be fully protected in acting upon any such order or direction of the Committee and shall not be responsible for any act or omission of the Committee.

(6) If in any year the Distribution Committee shall fail to appropriate, or to order or direct the Trustees to pay and disburse, the entire net income as set forth in subdivisions (1) and (5) of this Paragraph IV or the Distribution Amount as defined in subdivision (2) of this Paragraph IV, whichever is applicable, within thirty days after the end of said year, each of the Trustees shall promptly pay the Distribution Amount, if the Distribution Committee has adopted a Spending Policy, or, if not, the entire net income to Community Funds, Inc. to the end that there shall be no failure to carry out the educational, charitable or benevolent uses and purposes hereof.

(7) The Distribution Committee shall have the power (a) to select five members of the Distribution Committee as herein provided and (b) from time to time to approve in writing and permit other trust companies or financial institutions authorized by law to accept and execute trusts for the purposes specified in Paragraph IV to join The New York Community Trust.

*Power to  
appoint  
members*

*Approval of  
new trustees*

## V

The Distribution Committee shall consist of twelve individuals who are residents of the community defined in Paragraph IV selected for their knowledge of the educational, charitable or benevolent needs of the inhabitants of the community. No person holding full-time public office shall be

*Nomination,  
classification  
and  
appointment  
of Distribution  
Committee*

a member of the Distribution Committee, and if any member of said Committee shall be appointed or elected to any full-time public office, he or she shall thereupon and without further action or proceedings whatever, cease to be a member of the Committee. The Director of The New York Community Trust shall be a member of the Distribution Committee *ex officio*. The remaining eleven (11) members of the Distribution Committee shall be nominated and divided into classes as follows, the six-year term of the member(s) in each class commencing on January 1 of each of six (6) consecutive years:

Class (1): An individual nominated by the Chairman of the New York City Partnership and Chamber of Commerce and an individual selected by the Distribution Committee.

Class (2): An individual nominated by the Mayor of the City of New York and an individual selected by the Distribution Committee.

Class (3): An individual nominated by the President of the New York Academy of Medicine and an individual selected by the Distribution Committee.

Class (4): An individual nominated by the President of the Association of the Bar of the City of New York and an individual selected by the Distribution Committee.

Class (5): An individual nominated by the Chairman of Lincoln Center for the Performing Arts, Inc., and an individual selected by the Distribution Committee.

Class (6): An individual nominated by the Chief Judge of the United States Court of Appeals for the Second Circuit.

In making the nominations of the members

of the Distribution Committee, the persons upon whom such power of nomination is conferred shall be the incumbents for the time being of the several offices specified, and act solely in their individual capacity and by virtue of the power and authority herein conferred. Each appointment to the Distribution Committee will become effective upon approval by a majority of the persons who are then members of the Distribution Committee. Each member of the Distribution Committee shall serve until his or her successor is duly appointed and qualified.

Except for appointments to fill a vacancy and complete an unexpired term and except for the Director of The New York Community Trust, each member of the Distribution Committee shall hold office for a term of six years commencing the first day of January following his or her respective appointment. In the case of any member of the Distribution Committee who must be nominated by an individual holding a particular office, any nominations to fill any vacancy in such membership, whether caused by expiration of term, death, resignation or refusal to serve, shall be made by the individual holding such office at the time.

A member of the Distribution Committee appointed for the first time after December 31, 1977 shall hold office for the balance of any unexpired term to which he or she may be appointed and upon completion of service for a consecutive period that includes two full terms, such member shall not be eligible for reappointment for a period of three years.

Terms beginning after December 31, 1999 shall be for a period of six years. The terms of office of persons serving as members on December 31, 1999 shall terminate on December 31 of the following years:

*Filling of vacancies*

*Terms of office*

Class (1), 2004;  
Class (2), 2000;  
Class (3), 2001;  
Class (4), 2002;  
Class (5), 2003;  
Class (6), 1999.

Any member of the Distribution Committee may resign at any time by giving written notice to the Chairman. Failure of any member of the Distribution Committee to attend three consecutive meetings of the Committee shall, in the discretion of the Committee, and by the vote of the Committee, operate as a resignation from the Committee. In the event that any of the individuals herein authorized to nominate members of the Distribution Committee shall, for thirty days after request to nominate a member of the Committee, fail to exercise the power of nomination herein conferred, then and in any such event such power of nomination as well as appointment may be exercised by the action of the Distribution Committee.

Members of the Distribution Committee may be removed by a vote of three-fourths (3/4) of the persons who are then members of the Committee at a meeting of the Committee, written notice of which includes notice of the proposed removal.

In the event that any office, the holder of which is designated to nominate a member of the Distribution Committee, shall cease to exist, then the Distribution Committee shall designate the holder of another office and empower such officeholder to nominate a member of the Committee of the same class.

*Designation of  
new sources of  
nomination*

*Annual  
meeting of  
Distribution  
Committee*

The Distribution Committee shall annually meet on such business day as shall be fixed by the Distribution Committee. At the annual meeting the Distribution Committee shall elect a Chairman

from among its members. The Distribution Committee shall appoint the Director of The New York Community Trust by the vote of three-fourths (3/4) of the persons who are then members of the Committee. The Director, who shall also be known as the President, shall serve as Secretary of the Trustees' Committee for the duration of his or her appointment as Director. The Director shall receive such compensation and perform such duties as the Distribution Committee shall determine and shall keep a complete record of the proceedings of both the Distribution Committee and the Trustees' Committee.

*Chairman*

*Director and  
President*

Any written order or direction to a Trustee for the payment or distribution of money shall be deemed sufficiently made and executed if signed by the Chairman or Vice Chairman and attested by the Director or the Secretary or if signed by the Director and attested by the Secretary, and the Trustees and each of them shall be protected in acting upon any such written order or direction believed by the one of them to which the same shall be addressed to have been signed by the proper person or persons.

*Authentication  
of orders for  
payment of  
money*

Except as otherwise provided in this Resolution and Declaration: (i) a majority of the persons who are then members of the Distribution Committee (i.e., in office at the time the vote is taken) shall constitute a quorum for the transaction of any business at any meeting of the Committee; and (ii) the act of a majority of the members present at any such meeting at which a quorum is present shall be the act of the Committee. Any member of the Distribution Committee may participate in a meeting thereof by means of a conference telephone or similar device by which all persons can hear all other persons participating in the meeting at the same

*Quorum*

*Meeting by  
conference call*

*Unanimous  
written consent*

time. Any Distribution Committee action may be taken without a meeting if all persons who are then members of the Committee consent in writing. The Distribution Committee shall have power to adopt regulations and by-laws not inconsistent with this resolution and declaration providing for meetings, regular or special, the appointment of sub-committees for special purposes and for the government of its action and may amend such regulations or by-laws. Upon the recommendation of the Director, the Distribution Committee shall elect such officers as it may deem necessary.

*Election of  
officers*

*Expenses*

The reasonable expenses of the Distribution Committee and the compensation of the Director, at the absolute discretion of the Committee, may be paid out of the Distribution Amount as determined under subdivision (2) of Paragraph IV, the income certified by the Trustees as available for distribution as provided in subdivision (4) of Paragraph IV, or out of other funds designated for such purposes. Members of the Distribution Committee other than the Director shall serve without compensation.

The Distribution Committee may authorize the Director to hire such persons and incur reasonable and necessary expenses to carry out the educational, charitable or benevolent purposes hereof. Such expenses may be paid out of the Distribution Amount, as determined under subdivision (2) of Paragraph IV, the income certified by the Trustees as available for distribution as provided in subdivision (4) of Paragraph IV, or out of other funds designated for such purposes.

## VI

The Trustee of each trust made as provided in Paragraph II shall be vested under the terms of this declaration as Trustee of an express trust with the legal title to the property given, granted, devised or bequeathed to it for the uses and purposes and upon the conditions herein expressed and shall be entitled to exercise in respect of the property so held by it all rights of absolute ownership. Without in any way limiting or restricting the generality of the foregoing but rather in enlargement and extension thereof, the Trustee shall have the following powers:

*Titles and powers of trustees*

(1) To invest and reinvest any and all moneys received in securities and/or property in which, from time to time, it may be lawful to invest trust funds under the laws of the State of New York;

(2) To retain any and all property, real or personal, which may come into its hands in the form and condition in which it may be, notwithstanding the same be not a lawful investment for trust funds under the laws of the State of New York, or, if it shall deem it advisable, from time to time, sell or exchange any or all such property;

(3) To sell, lease (for such periods as it shall deem for the best interests of said fund), convey, transfer, exchange, deliver and dispose of all or any part of the principal or capital of the funds or property from time to time constituting said fund, at such prices and upon such terms and conditions as to it shall seem expedient and proper; no purchaser of any securities or property sold by said Trustee shall be bound to ascertain or inquire into the necessity or propriety of any such sale or shall be bound to see to the application of the purchase moneys paid

thereon, and the receipts or receipt in writing of said Trustee for the purchase money of any property sold or for any moneys, stocks, funds, shares or securities which may be paid or transferred to it shall effectually discharge the purchaser or purchasers or other person or persons paying or transferring the same therefrom or for being answerable for the application or misapplication thereof;

(4) To consent to the extension, refunding or renewal of any of such securities and to the extension or renewal of any mortgage or lien securing the same;

(5) To make, execute and deliver all proper receipts, bills of sale, conveyances, assignments, transfers, proxies, powers of attorney and agreements as it shall deem best in the management and control of the securities and property constituting said fund;

(6) To apportion any losses to principal or income as it shall deem best;

(7) To make or join in any plan or plans of reorganization or of readjustment in respect of any corporation of which any of the shares of stock, bonds, or other securities or obligations at any time constitute part of the principal of the fund, and to accept and hold any property or new securities in exchange for or in place of any securities surrendered in accordance with any such plan in the place of the securities so surrendered;

(8) To refrain, in its discretion, from setting aside any part of the income received by it from securities taken or purchased as part of said fund at a premium as a sinking fund to retire or amortize such premiums;

(9) To vote or refrain from voting upon all stocks held by it, to unite with other owners of the securities of any corporation in carrying out any

plan for the reorganization thereof, to exchange the securities of any corporation for others issued by the same or by any other corporation upon such terms as said Trustee shall deem proper; to assent to the consolidation or merger of any corporation whose securities are held by it with any other corporation, to the lease by such corporation of its property or any portion thereof to any other corporation, or to the lease by any other corporation of its property to such corporation, and upon any such consolidation, merger, lease or similar arrangement to exchange the securities held by the Trustee for other securities issued in substitution therefor; to pay all such assessments, expenses and sums of money as it may deem expedient for the protection of the interest of the fund as holder of the stocks, bonds, or other securities of any corporation or company.

The powers conferred upon the Trustee shall nevertheless be subject to the following limitations and restrictions:

(a) The Trustee, in making investments or reinvestments for a trust held hereunder, shall in no case be permitted to purchase securities or property from itself or any affiliate, except as authorized by law or except insofar as the compensation, if any, paid to the Trustee or its affiliate in connection with making, holding, and disposing of any such investment or reinvestment is approved in advance by the Director of The New York Community Trust;

(b) All securities and property at any time held by the Trustee shall be devoted exclusively to the educational, charitable and benevolent purposes herein mentioned;

(c) The Trustee shall not have power to mortgage or pledge said securities or property or any part thereof, except as otherwise prescribed by the donor.

*Limitations  
and  
restrictions on  
powers*

*Employment of  
agents, etc.*

*Expenses*

*Protection of  
Trustees*

The Trustee of each trust made as provided in Paragraph II may perform any power or duty hereunder, whether discretionary or not, by or through, and may select and employ in and about the execution thereof, attorneys, agents or servants, and may retain reasonable and proper compensation for the services and expenses of such attorneys, agents or servants. The Trustee may also retain reasonable and proper compensation for its services and expenses as Trustee, not exceeding, unless otherwise provided by the donor, the compensation allowed to Trustees under the laws of the State of New York. The Distribution Committee, in its absolute discretion, may permit such compensation to be paid, in whole or in part, out of principal. No Trustee shall be answerable for the acts, receipts, neglects or defaults of any of the other Trustees. A Trustee has a duty to invest and manage property held in trust hereunder in accordance with the legal standards applicable to a fiduciary with special investment skills.

No Trustee shall be responsible for the validity of any gift, grant, devise, or bequest at any time made to any of them for the uses and purposes and upon the conditions expressed in this declaration.

## VII

*Trustees'  
Committee*

To insure unity of purpose and concert of action among the Trustees, to complete the organization and provide for the continuance of The New York Community Trust and for the other purposes in this paragraph mentioned, the persons who shall be considered by each Trustee to be its chief executive officer (regardless of title) ("Chief Executive Of-

ficer”) for the time being of each of the Trustees shall constitute a Committee which shall be known as the Trustees’ Committee. The Trustees’ Committee shall have such powers as may be necessary to effectuate the foregoing objects and shall from time to time take such action and perform such duties as are herein provided to be taken or performed by said Committee. The Trustees’ Committee shall have no power to interfere with the management or disposition of any property vested in or held by the Trustees or with the distribution of the income or principal thereof.

*Powers*

*Limitation of powers*

Each member of the Trustees’ Committee shall be entitled to one vote and, in addition, to one vote for each one hundred thousand dollars (\$100,000) of principal of trusts held by the Trustee represented by such member at the close of the preceding calendar year for the uses and purposes herein set forth, disregarding any fraction of one hundred thousand dollars (\$100,000).

*Voting power of members*

The Trustees’ Committee may take action at a meeting of its members by resolution adopted by a majority of the votes of all the members, although a majority of the members may not be present at the meeting, or by writing subscribed by all the members of such Committee without a meeting thereof, but no action shall be taken in writing without a meeting, except with the unanimous consent of all the members of said Committee. Any member of the Trustees’ Committee may participate in a meeting thereof by means of a conference telephone or similar device by which all persons can hear all other persons participating in the meeting at the same time. The Trustees’ Committee may prescribe such rules and regulations of procedure as it may deem expedient. The Chief Executive Officer of any Trustee shall have power to appoint one or more

*Action at meetings or in writing*

*No  
compensation*

of the Vice Presidents or other executive officers as alternate for the Chief Executive Officer, who shall have all the powers and duties and be entitled to all the immunities herein specified in respect of a member of said Committee. The members of the Trustees' Committee shall receive no compensation for their services. No member of the Trustees' Committee shall in any event or in any manner be or become liable for any act done or omitted to be done or for any consent or approval given or withheld except only each for his own intentional bad faith, nor shall the Trustees be responsible for any action of the Trustees' Committee or any member thereof.

## VIII

*Annual audit  
of Trustees'  
accounts*

In the discretion of the Distribution Committee, the accounts of the Trustees may be annually audited by an independent auditor to be appointed by the Distribution Committee and paid out of the income or principal of the trusts held by the Trustees hereunder as the Distribution Committee shall determine, as a part of the expenses of the said Committee. There shall annually be published in such form as said Committee may direct, a report of its proceedings during the preceding year which shall state the aggregate of the funds, the disbursements made pursuant to the direction of said Committee and the purposes for which the same were made. The cost of the publication of such report shall be regarded as part of the expenses of the Distribution Committee.

The Director annually shall present a report, certified by an independent public accountant or a

firm of such accountants selected by the Distribution Committee, showing in appropriate detail on an aggregated basis the assets and liabilities of the trusts held by the Trustees hereunder, the changes in assets and liabilities, revenues and receipts, and expenses or disbursements for the preceding twelve-month fiscal period.

The Attorney General of the State of New York, or such other law officer having similar jurisdiction as may hereafter be appointed with another title, and any representative of the Distribution Committee thereunto duly authorized by resolution adopted by said Committee shall have, at all reasonable times during business hours, the right to inspect the books, vouchers and records of the Trustees and of the Distribution Committee in any-wise appertaining to the trusts held by the Trustees hereunder or the management thereof or the distribution and application of the income, or principal thereof.

*Right of inspection and restraint*

## IX

Any corporation which shall be the successor to or shall acquire the property and assets of any of the Trustees, whether by merger, consolidation or otherwise, shall forthwith be and become one of the Trustees hereunder with all the rights, power and duties vested in the predecessor Trustee by the terms hereof.

*Successor corporations to become Trustees*

Any of the Trustees may at any time resign and surrender the property held by it, or in the case of insolvency, may surrender it, to Community Funds, Inc., if Community Funds, Inc. is willing to accept it, to be held for the same general purposes as held

*Resignation of Trustees*

by such Trustee, and such Trustee shall thereupon be discharged and released from its obligations under any gift, grant, devise or bequest of such property and hereunder.

*Replacement  
of Trustees*

If any Trustee or parent holding company is the subject of a material corrective action by any federal or state regulatory authority, if any federal or state regulatory authority mandates the liquidation or reorganization of any Trustee or its parent holding company, or if any Trustee or its parent holding company's insolvency or similarly extraordinary event jeopardizes, in the sole determination of the Distribution Committee, the orderly administration of the trusts held by the Trustee or the safety or security of its trust assets, the Distribution Committee may remove the Trustee and designate Community Funds, Inc. or appoint one of the Trustees, with its consent, to demand and receive the property held by the Trustee, whereupon the Trustee so removed shall transfer, convey and pay over the trust property to Community Funds, Inc. or the Trustee so appointed, as the case may be, upon which transfer, conveyance and payment the Trustee so removed shall be discharged and released from its ongoing powers and obligations to manage and administer the property constituting such trust. Such removal and appointment shall be evidenced by a written instrument acknowledged by the Director of The New York Community Trust or the Chairman of the Distribution Committee delivered to the Trustee so removed or appointed, as the case may be.

*Power to  
terminate trust*

In the case of any trust accepted after December 31, 2008, the Distribution Committee in its discretion, with the consent of the grantor if living, or without further consent if the grantor is not living, may remove the Trustee of any trust held hereun-

der and appoint one of the other Trustees as the Trustee thereof, if such Trustee is willing to accept it, whereupon the Trustee so removed shall transfer, convey and pay over the trust property to the Trustee so appointed, upon which transfer, conveyance and payment the Trustee so removed shall be discharged and released from its ongoing powers and obligations to manage and administer the property constituting such trust. Such removal and appointment shall be evidenced by a written instrument acknowledged by the Director of The New York Community Trust or the Chairman of the Distribution Committee delivered to the Trustee so removed or appointed, as the case may be.

In the case of any trust accepted on or before December 31, 2008, the Distribution Committee shall have the power to replace a Trustee, custodian or agent, and transfer the assets to another custodian, agent or Trustee, as the case may be, or to Community Funds, Inc. for breach of fiduciary duty or for failure to produce a reasonable (as determined by the Distribution Committee) return on investment of the assets for which it has responsibility over a reasonable period of time (as determined by the Distribution Committee).

The Distribution Committee shall not be liable for any delay in exercise, the manner of exercising, or any exercise or non-exercise of its powers of removal and appointment under this Paragraph IX.

## X

To further assure the carrying out of the purposes hereof, each and every one of the provisions of this resolution and declaration are to be regarded

*Provisions  
independent*

and construed as independent of every other provision. In the event that the final determination of a court of competent jurisdiction shall adjudge that any of the terms, conditions or provisions of the resolution and declaration are invalid, such adjudication shall not affect the validity of the remaining provisions.

In the event that such determination shall adjudge that the powers hereby in Paragraph IV conferred upon the Distribution Committee are invalid, or in the event that, under the provisions of Paragraph XI, The New York Community Trust and the powers and duties of the Distribution Committee shall be terminated, then and in either event each of the Trustees shall have and may exercise the powers so conferred upon the Distribution Committee in respect of any property given, granted, devised or bequeathed to each Trustee for the uses and purposes herein set forth.

## XI

*Amendment,  
modification or  
termination*

The donor of any gift, grant, devise or bequest for the uses and purposes herein expressed, and upon and subject to the provisions hereof and all persons claiming by, through or under him and each Trustee by the acceptance thereof shall be conclusively deemed to have agreed that the Distribution Committee may, by resolution adopted by the affirmative vote of three-fourths (3/4) of the persons who are then members of the Distribution Committee, when approved by resolution adopted by the affirmative vote of three-fourths (3/4) of all the votes of all the members of the Trustees' Committee, from time to time or at any time (1) modify, supplement or restrict the educational, charitable

and benevolent uses and purposes to which the funds available for distribution may be applied herein; (2) change the method of nomination or appointment of the members of the Distribution Committee or increase or reduce the number of its members; (3) construe any provision of this resolution and declaration, which construction and action thereunder in good faith shall be conclusive; (4) supply any defect or omission herein which said Committees may then deem advisable to carry out the purposes of The New York Community Trust properly and effectively; (5) amend the provisions hereof in any respect which shall be consistent with the application of the entire net income and the principal of any gift, grant, devise or bequest for educational, charitable or benevolent uses and purposes and for no other use or purpose whatever; (6) terminate The New York Community Trust and all the powers and duties of the Distribution Committee with the effect provided in Paragraph X. A copy of any resolutions so adopted, certified by the Director of The New York Community Trust, shall be delivered to each member of the Trustees' Committee, together with a copy or copies of this resolution and declaration as so amended and changed.

Exhibit A

This Resolution and Declaration of Trust has been adopted by the following banks:

Bank of America  
The Bank of New York Mellon  
Bessemer Trust Company  
Brown Brothers Harriman Trust Company  
Citigroup, Inc.  
Deutsche Bank Trust Company  
Fiduciary Trust Company International  
HSBC Bank USA  
Lehman Brothers Trust Company  
Merrill Lynch Trust Company  
JPMorgan Chase Bank  
The Rockefeller Trust Company



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