

**AMENDED AND RESTATED
COMMUNITY LIVING CORPORATION, INC.
POOLED TRUST 2 AGREEMENT
(A TRUST FUNDED BY PEOPLE WITH DISABILITIES)**

Dated: August 24, 2010

**Community Living Corporation, Inc.
105 South Bedford Road
Mount Kisco, New York 10549
Phone: (914) 241-3628
Fax: (914) 241-1109**

Tax Identification Number: 13-7093080

**AMENDED AND RESTATED
COMMUNITY LIVING CORPORATION, INC.
POOLED TRUST 2 AGREEMENT
(A TRUST FUNDED BY PEOPLE WITH DISABILITIES)**

WHEREAS, COMMUNITY LIVING CORPORATION, INC., a not-for-profit organization incorporated in New York State, whose principal office is located at 600 Bedford Road, Mount Kisco, New York 10549, (hereinafter referred to as “Grantor” or “CLC”), established a Trust known as the CLC Pooled Trust 2 (the “Trust”) on or about November 1, 1996 by a certain Trust Agreement; and

WHEREAS, Article 16 of the Trust Agreement permits its amendment by a vote of a majority of the CLC Board of Directors, for the purpose of conforming the Trust to any applicable law, statute, regulation or change of circumstances; and

WHEREAS, changes in applicable law and circumstances have occurred since the inception of the Trust; and

WHEREAS, as a result CLC’s Board of Directors approved the amendment and restatement of the Trust on August 24, 2010.

NOW, THEREFORE, IT IS AGREED that the Trust shall be amended, restated and administered as follows:

1. ESTABLISHMENT AND PURPOSE OF TRUST.

1.1 **Name of Trust.** This Trust shall be known as the “COMMUNITY LIVING CORPORATION, INC. POOLED TRUST 2” (herein after referred to as the “Trust.”)

1.2 **Trust Property.** The Grantor does hereby irrevocably transfer and deliver to the Trustee a sum as specified in the Sponsor Agreement prepared and executed by a Sponsor, the receipt of which is hereby acknowledged by the Trustee, and any cash, securities or other trust property which the Trustee may subsequently hold and/or acquire pursuant to the provisions of this trust agreement for the uses and purposes and upon the terms and conditions set forth herein.

1.3 **Trust Purpose.** This is an irrevocable pooled trust established for the sole benefit of individual beneficiaries who are defined as disabled pursuant to Section 1614(a)(3) of the Social Security Act, codified at 42 USC 1382c(a)(3) (“Designated Beneficiaries”). Individual Trust Accounts shall be maintained for each Designated Beneficiary, but for the purposes of investment and management of trust funds, the Trustees may pool these accounts and manage them collectively. This Trust is intended to provide, in the sole and absolute discretion of the Trustees, extra and supplemental items for the care, support, comfort, education, rehabilitation and training of the Designated Beneficiaries in addition to and over and above benefits they already receive, are entitled to receive or may receive in the future as a result of their mental retardation or physical, psychological or developmental disabilities from any federal, state or local government program, agency or department.

2. **TRUST ACCOUNTS**

2.1 **Establishment of Trust Accounts.** A trust account for the sole benefit of a Designated Beneficiary may be established by the beneficiary, the beneficiary's parent, grandparent, legal guardian, or by Court Order.

2.2 **Funding of Trust Accounts.** The Trust Accounts shall be funded with assets owned by the Designated Beneficiary, which may be considered available to the Designated Beneficiary for purposes of determining eligibility for government benefits.

2.3 **Sponsor Agreement.** A person or entity who establishes a Trust Account shall be referred to as the “Sponsor.” The Sponsor shall execute a “Sponsor Agreement” which adopts and incorporates by reference the terms of this Trust Agreement. The Trustees have complete discretionary authority not to accept a Sponsor Agreement or to terminate an existing Sponsor Agreement.

2.4 **Execution of Sponsor Agreement.** This Trust is applicable to an individual Designated Beneficiary when a Sponsor Agreement is signed by a Sponsor and a Trustee or a Trustee’s designee. Upon acceptance, a Trust Account shall be established for the Designated Beneficiary named in the Sponsor Agreement and held and administered pursuant to the terms and provisions of this Trust Agreement. By executing a Sponsor Agreement, a Sponsor agrees to all the terms and conditions of this Trust Agreement and any amendments hereto.

2.5 **Trust Account Beneficiaries and Remaindermen.** Each Sponsor Agreement shall designate the Designated Beneficiary for whom a trust account is established, and provide for the distribution of any remaining balance to a remainderman upon the death of the Designated Beneficiary pursuant to Section 7 of this Trust, entitled “Disposition of Trust Account Upon The Death of A Designated Beneficiary.”

3. **FUNDING OF TRUST ACCOUNTS.**

3.1 **Additions to a Trust Account.** The Sponsor, or any other person or entity making a contribution to a Trust Account, shall have the right at any time to add property to a Trust Account on behalf of a Designated Beneficiary, subject to acceptance by the Trustee. This

additional property, upon acceptance by the Trustee, shall become a part of the trust and be held and managed for the benefit of the Designated Beneficiary.

3.2 **Sources of Additions to a Trust Account.** Additions to a trust account may be made on behalf of a Designated Beneficiary by the Sponsor or any other person or entity other than a Designated Beneficiary by any means, including but not limited to, gifts, by naming the Trust as beneficiary under a trust agreement, making a disposition to the Trust under a Will, or by naming the Trust Account as owner and/or Designated Beneficiary under an insurance contract, annuity contract, or retirement plan.

3.3 **Refusal and Return of Property by Trustee.** If property is offered for transfer to a Trust Account, the Trustee shall have sole and absolute discretion and authority to accept or refuse to accept the property, impose any conditions that must be met prior to acceptance or require that the property be liquidated. If the Trustee decides not to accept a transfer of property, he shall advise the person making the transfer or the personal representative of his estate in writing within thirty (30) days after receiving written notification of the nature of the property to be transferred. If the property has already been received or ownership transferred to the Trust, the Trustee shall have the right to cancel the transfer of the property, and the Trustee shall promptly have the property transferred and returned to the person making the transfer or his estate, who shall assume all costs related to the transfer and return of the property, as determined by the Trustee, including but not limited to any costs, fees and expenses related to the filing of documents or transfer of the property and costs of shipping, storage or handling.

3.4 **Trust Account Designation by Contributor.** Any person making a contribution to the Trust (a "Contributor") shall designate the specific trust account to which the property is to be allocated. If an account is not specified, the Trust Account for which the Contributor or his spouse is Sponsor shall be deemed to be the designated Trust Account. If the Contributor or his spouse is not a Sponsor of a Trust Account, the Trustee shall determine the Trust Account(s) to which the property shall be allocated or may establish a new Trust Account for each eligible Designated Beneficiary for whom the property is contributed.

4. **MINIMUM FUNDING BY SPONSOR.**

4.1 **Required Contribution.** Each Sponsor who wants to establish a Trust Account for a Designated Beneficiary must agree to make the initial minimum contribution specified in the Sponsor Agreement upon acceptance by the Trustee.

4.2 **Minimum Contribution Required as a Condition for Participation.** The commitment on the part of the Sponsor to make the required initial minimum contribution is a condition of the acceptance of the Sponsor Agreement. The Trustee, in his/her/its sole discretion, shall have the right at any time to modify the amount of the required initial minimum contribution.

4.3 **Irrevocable Transfer.** A Sponsor or any other person or entity who contributes to the Trust shall not be permitted to revoke a Sponsor Agreement or withdraw any funds contributed to the Trust under such Agreement.

5. ADMINISTRATION OF TRUST ACCOUNTS.

5.1 Administration for Sole Benefit of Designated Beneficiary. Each Trust Account shall be held for the exclusive benefit of the Designated Beneficiary of that Trust Account during his lifetime. The Trustee shall not use assets in a Trust Account for the benefit of a Designated Beneficiary of another Trust Account or for any purposes not set forth in this Trust Agreement. No Remainderman shall have a present interest in the Trust Account until the death of the Designated Beneficiary. The Trustee shall consider the interests of a Remainderman to be subordinate to those of the Designated Beneficiary during his lifetime. No Remainderman need be cited in an accounting proceeding during the Designated Beneficiary's lifetime.

5.2 Management of Trust Accounts. The Trustee is authorized to pool, commingle and jointly manage for investment purposes only the assets of all Trust Accounts. Each Trust Account shall be credited with its proportionate share of the net income from the Trust. The term "net income" shall mean the profits and income generated from investment of pooled funds, minus losses and expenses generally attributable to administration of the Trust. Each Trust Account shall be charged separately with disbursements and distributions made on behalf of the Designated Beneficiary or allocated to that Trust Account.

5.3 Treatment of Assets Contributed In Kind. The Trustee shall have absolute discretion and authority to allocate assets received by him "in kind" solely to the Trust Accounts for which the assets have been contributed. In such cases, only the Trust Account in question shall be credited or charged with its share of income, profits, gains and losses derived from the segregated assets. The Trustee, in his sole discretion, shall have the right to charge the Trust Account for administrative services and expenses attributable to the segregated assets in addition to general administrative services and expenses.

5.4 Accounting. The Trustee shall be required to comply with the Accounting and other filing requirements of Mental Hygiene Law §81.31-81.32, and of any court with jurisdiction over a Trust Account. The final Accounting of the Trustee shall otherwise be settled without judicial approval.

5.5 Distributions for a Designated Beneficiary. During the lifetime of a Designated Beneficiary, the Trustee shall use, apply or expend as much of the net income and principal of the Trust Account for the supplemental needs of the Designated Beneficiary of the Trust Account as the Trustee, in its sole and absolute discretion, deems appropriate. This trust is intended to conform to the provisions of section 7-1.12 of the New York Estates, Powers and Trusts Law. This trust shall supplement, and not replace, impair or diminish the Designated Beneficiary's eligibility for benefits or assistance of any federal, state, county, city, or other governmental entity. The income and principal of the trust shall be used to provide goods and services that enhance a Designated Beneficiary's quality of life, and which are not otherwise provided for or covered, payable or reimbursable by any government benefit program and shall not be considered an available resource.

5.6 **Availability of Benefits.** Consistent with that intent, before expending any amounts from the net income and/or principal of a Trust Account, the Trustee shall consider the availability of all benefits from government or private assistance programs for which the Designated Beneficiary may be eligible. It is the Trustee's intention to maximize wherever possible, the collection and facilitate the distribution of these benefits.

5.7 **Expenditure of Funds.** The Trustee is authorized to expend funds for the supplemental needs of the Designated Beneficiary not provided through government benefits. The Trustee is prohibited from making expenditures that will impair or diminish the Designated Beneficiary's receipt of, or eligibility for, government benefits, except under the limited discretionary authority of section 5.8 below.

5.8 **Discretionary Authority of Trustee.** Notwithstanding the above provisions, the Trustee may make distributions to meet the Designated Beneficiary's need for food, clothing, shelter, health care, or other personal needs, even if those distributions will impair or diminish the Designated Beneficiary's receipt of, or eligibility for, government benefits or assistance, only if the Trustee determines that the distributions will better meet the Designated Beneficiary's needs, and it is in the Designated Beneficiary's best interests, notwithstanding the consequent effect on the Designated Beneficiary's eligibility for, or receipt of, government benefits. However, if the mere existence of this authority to make distributions from a particular Trust Account will result in a reduction or loss of the Designated Beneficiary's entitlement to government benefit programs, regardless of whether the Trustee actually exercises this discretion, this paragraph shall be null and void with respect to such Trust Account, and the Trustee's authority to make these distributions shall terminate and the authority to make distributions shall be limited to purchasing supplemental goods and services in a manner that will not adversely effect the Designated Beneficiary's government benefits.

5.9 **Prohibition Against Court Order to Invade Principal.** No interest in the principal or income of any Trust Account shall be anticipated, assigned or encumbered pursuant to the authority of section 7-1.6 of New York's Estate, Powers and Trusts Law or any other comparable state or federal rule, regulation, statute or constitutional. EPTL 7-1.6(b) shall not apply.

5.10 **Spendthrift Provision.** The interest of a Designated Beneficiary and/or Remainderman in the property held in a Trust Account, including income and principal, prior to actual payment or delivery by the Trustee, shall not be transferable by voluntary or involuntary assignment or by operation of law. No Designated Beneficiary shall have the power to assign, encumber, direct, distribute or authorize distributions from any Trust Account.

5.11 **Authority to Maintain Eligibility for Government Benefits.** If requested to release Trust Account income or principal by any government or private agency, the Trustee is authorized to take whatever steps, administrative or judicial, as may be necessary to continue the Designated Beneficiary's eligibility for the benefits at issue. The Trustee may use Trust Account assets to retain an attorney to resolve disputes with any government or private agency; however, if required by court order, the Trustee shall obtain court approval to retain an attorney for this purpose.

6. DISCRETIONARY AUTHORITY OF TRUSTEE.

6.1 **Binding Effect of Trustee Decisions.** The exercise or non-exercise of any discretionary power granted hereunder to the Trustee and all actions taken with respect to making distributions hereunder shall be final and binding upon all persons.

6.2 **Limitations on Discretionary Authority If Trustee is a Sponsor.** No Trustee shall exercise or join in the exercise of any discretionary authority granted under this Trust Agreement over any Trust Account to which he has made a contribution. The exercise of any such discretionary power shall be made by the remaining Trustees.

7. DISPOSITION OF TRUST ACCOUNT UPON THE DEATH OF A DESIGNATED BENEFICIARY.

After the payment of a beneficiary's estate administration expenses attributable to the Trust (including taxes and attorney's fees) and reimbursement for income taxes, the remaining balance of the Trust Account shall be credited to the "Remainder Sub-Trust Account" which amount may be used for the purpose of providing direct supplemental needs assistance to any individual who is disabled pursuant to Social Security Law Section 1614(a)(3) [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 for the purpose of providing indirect supplemental needs assistance to or on behalf of individuals with disabilities. Amounts in the Remainder Sub-Trust Account shall also be available to the Trustee to meet any administrative and/or operating expenses incurred by the Trust. To the extent that amounts remaining in a Beneficiary's 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 Trust shall pay to the State from such deceased Beneficiary's account any remaining amounts equal to the total amount of medical assistance paid on behalf of the Beneficiary under the State plan pursuant to 42 USCS §§ 1396 et seq.

8. IDENTITY, APPOINTMENT AND REMOVAL OF TRUSTEES AND SUCCESSORS.

8.1 **Identification of Trustees.** The trustees of the Trust are CLC Foundation, Inc. and the Trust Company designated on Appendix A hereto.

8.2 **Successor Trustee.** CLC's Board of Directors shall have the absolute right to appoint in its sole discretion Successor Trustees pursuant to the terms and conditions as outlined in this section.

8.3 **Appointment of Successor Trustee.** The appointment of any Successor Trustee shall become effective immediately upon the action of the CLC Board of Directors, subject to the approval of any court having jurisdiction over the Trust if such judicial approval is required. The

CLC Board of Directors shall have sole authority to determine the terms and duration of the appointment of any Successor Trustee.

8.4 **Rights and Powers of Successor Trustee.** A Successor Trustee appointed by the CLC Board of Directors shall immediately succeed to all existing title held by the prior Trustee and to all powers, rights, discretion, obligations, and immunities of a Trustee under this Agreement with the same effect as though such Successor or Trustee were originally named as a Trustee in this Agreement, subject to any limitations in this Trust or imposed by vote of the CLC Board of Directors upon appointment.

8.5 **Removal of Trustee.** The CLC Board of Directors shall have sole and absolute authority to replace a Trustee, for any reason, with or without cause, by a majority vote. The CLC Board of Directors shall then appoint a Successor Trustee in the manner provided for herein.

8.6 **Indemnification of Trustee.** CLC shall defend, indemnify and hold harmless any Trustee, its heirs, executors, administrators, successors and assigns in any action or proceeding brought against it at any time (during or subsequent to its tenure as Trustee) for all actions taken by it in managing and administering the Trust as the designee of CLC, or obtain insurance to achieve the same result. CLC will pay for all costs, expenses and attorney's fees related to any action or proceeding brought against any Trustee for all actions taken in connection with the management and administration of the Trust, except in cases of gross negligence or willful misconduct. The provisions of this subparagraph shall apply regardless of whether such action or proceeding is brought against the Trustee in an official, individual or fiduciary capacity.

9. **TRUSTEE'S RELIANCE UPON REPRESENTATIONS BY OTHERS.**

A Trustee shall be fully protected when acting upon any instrument, certificate, paper or presentation believed by it to be genuine and to be signed or presented by the proper person or persons, and the Trustee shall be under no duty to make any investigation or inquiry as to any statement contained in such writing or representation, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

10. **DELEGATION OF AUTHORITY.**

10.1 **Delegation of Trustee Duties and Authority.** Except as otherwise expressly provided in this Trust Agreement, a Trustee shall have the authority to delegate to one or more Agents all duties required of it or exercises of discretion granted to it under this Trust Agreement, including, but not limited to, disbursement of funds on behalf of a Designated Beneficiary, selection of investments for the trust property and performance of other administrative duties. Such delegation shall become effective immediately upon approval by the Trustee(s) then serving. All persons dealing with the Trustee are released from inquiry into the decision or authorities of the Trustee or any one of them and from seeing to the application of any moneys, securities or other properties paid or delivered to the Trustee or any one of them or any agent acting on their behalf.

10.2 **Authority to Hire Corporate Custodian For Assets of the Trust.** The Trustees shall have the authority, but not the obligation, to hire a corporation to serve as a Custodian for the Trust which is authorized in the State of New York to serve as a Custodian over trust securities and assets. The duties of the Custodian shall include, but not be limited to, the safekeeping of securities and other Trust assets, maintenance of Trust records and payment of disbursements and distributions from the Trust.

10.3 **Authority to Hire Investment Counsel and Delegate Investment Authority.** The Trustees shall have the authority to hire an investment advisor or investment counsel on behalf of the Trust, and shall have the right to delegate investment authority to an advisor who shall be authorized to make investments on behalf of the Trust with the prior approval of the Trustees.

11. **OTHER PROVISIONS APPLYING TO TRUSTEE.**

11.1 **Powers of the Trustee.** 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 the New York Estate Powers and Trusts Law, and the powers conferred upon the Trustees by said statute are hereby incorporated into this Trust by reference

11.2 **Authority to Retain Advisors and Agents.** The Trustees shall have the authority to employ and to delegate any of their discretionary and non-discretionary powers to agents, including, but not limited to, attorneys, investment advisors, appraisers, accountants, social workers, case managers, and companions for the Designated Beneficiary of a Trust Account as they deem necessary and proper and to pay for such services from such Trust Account.

11.3 **Payment for Services.** The Trustees are authorized to compensate agents, accountants, custodians, legal and investment counsel and advisors for their services and reasonable expenses. These and any other expenses attributable to the administration of the Trust, including but not limited to reasonable administrative fees charged by CLC and/or CLCF, shall be charged generally against the trust property and shall be allocated to the Trust Accounts in proportion to their relative values or in any other manner deemed appropriate by the Trustees.

11.4 **Compensation of Trustees.** The Trustees may waive statutory commissions, but are entitled to charge reasonable and necessary fees and expenses incurred in the administration of the trust in accordance with the applicable Sponsorship Agreement, and any applicable court order.

12. **BOND / INSURANCE**

No bond or other security shall be required of the Trustee or any successors. However, the Trustees are authorized to obtain such bond as may be required by regulation or a court of competent jurisdiction or other action of the appropriate state or local government agency. The Trustees may purchase liability insurance covering claims arising from their services as Trustee hereunder. The premiums for any such bond or insurance coverage shall be charged as a general expense of the Trust.

13. WAIVER OF POTENTIAL CONFLICT OF INTEREST OF TRUSTEE.

There may be a potential conflict of interest in the administration of the Trust since (a) the Trustee may make disbursements directly to a Designated Beneficiary or on behalf of a Designated Beneficiary for the costs of services and benefits provided directly or indirectly by CLC or CLCF or an affiliated enterprise of either and (b) the Trust may retain those funds remaining in the Trust at the time of death of the Designated Beneficiary. The Sponsors executing the Sponsor Agreements are aware of the potential conflicts of interest that exist in the Trustees' administration of the Trust. Any Sponsor executing a Sponsor Agreement to this 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 Sponsor or to any party for any act of self-dealing or conflict of interest resulting from their affiliations with CLC and/or CLCF, or with any related entities or a Designated Beneficiary.

14. POWER TO AMEND TRUST.

The terms of the Trust Agreement may be amended by a vote of a majority of the CLC Board of Directors and shall become effective immediately upon approval by the requisite number of Directors. However, if approval of any court having jurisdiction over the Trust is required, any amendments shall be subject to the approval of such court. Notwithstanding the foregoing, the CLC Board of Directors shall have no power to alter or amend the identity of a Designated Beneficiary or to an interest in the Trust as set forth in this Trust Agreement and the Sponsor Agreements. The CLC Board of Directors shall have no power to make any amendment that will adversely affect the exempt status of these funds under Federal and State law.

15. GOVERNING LAW.

This Trust instrument shall be interpreted and the administration of the trust shall be governed by the laws of the State of New York. However, if applicable, federal law shall govern any matter related to the relationship between this Trust and the government benefits for which a Designated Beneficiary may be eligible. The situs of this trust for administrative and accounting purposes shall be in the County of Westchester, which is the location of the principal office of CLC and where the CLC Board of Directors meets.

16. INVALIDITY OF ANY PROVISION.

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

17. TERMINOLOGY AND CONSTRUCTION.

Under this instrument the masculine, feminine or neuter gender, and the singular or plural, of any term shall each include the others depending on the context.

18. HEADINGS.

The headings or captions in this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intention of the parties or affect any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Grantor, the Administrative Trustee and the Trust Company set forth on Appendix A hereto execute this instrument on the dates indicated below

[signature page to follow]


APPENDIX A

ACKNOWLEDGMENT OF RECEIPT, APPROVAL AND ACCEPTANCE

SANTA FE TRUST, INC. hereby acknowledges receipt, approval and acceptance of the Amended and Restated Community Living Corporation, Inc. Pooled Trust 1 Agreement dated August 24, 2010 and the Amended and Restated Community Living Corporation, Inc. Pooled Trust 2 Agreement dated August 24, 2010.

Dated this 27th day of September, 2010.

SANTA FE TRUST, INC.

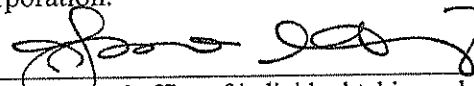
By: 

Steven R. Bone

Its: Executive Vice President

STATE OF NEW MEXICO }
 }
COUNTY OF SANTA FE }

On the 27th day of September in the year .2010 before me personally came .Steven R. Bone to me known, who, being by me duly sworn, did depose and say that he resides in .Santa Fe, New Mexico; that he is the Executive Vice President of Santa Fe Trust, Inc., the corporation described in and which executed the above instrument; and that he signed his name thereto by authority of the board of directors of said corporation.


(signature and office of individual taking acknowledgment)

