

DECLARATION OF TRUST made and entered into this            day  
of October, 1988, establishing a Trust by the WESTCHESTER  
COUNTY CORRECTION OFFICER'S BENEVOLENT ASSOCIATION, INC.  
(C.O.B.A.) for and in behalf of certain employees of the  
COUNTY OF WESTCHESTER, DEPARTMENT OF CORRECTIONAL SERVICES,  
in respect to the receipt of said Trust of certain monies  
paid by said Board, the corpus of said Trust to be held,  
invested and expended as otherwise hereinafter set forth for  
the exclusive benefit of such employees as hereinafter set  
forth.

WITNESSETH:

WHEREAS, heretofore there has been executed a Collective  
Bargaining Agreement between the C.O.B.A. and the County of  
Westchester dated October 30, 1986; and

WHEREAS, by Article §3.5 of such Collective Bargaining  
Agreement as aforesaid, the County of Westchester is  
obligated to pay certain sums of money for the benefit of all  
employees within the appropriate unit designated by said  
Collective Bargaining Agreement; and

WHEREAS, it is appropriate to hereby create such

Westchester County Correction Officers Benevolent Association Inc. Welfare and Trust Fund, to name trustees to administer such Fund and to define their rights duties, and responsibilities; and

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained, it is hereby mutually understood and agreed as follows:

#### ARTICLE I

##### Declaration of Trust

1.1 There is hereby created a trust fund which shall be called the Westchester County Correction Officers Benevolent Association Inc. Welfare Trust Fund, to be used for the purposes hereinafter set forth in this Declaration of Trust.

1.2 The Fund shall be a Trust Fund and shall be used for the benefit of all employees within the designated bargaining unit in the Collective Bargaining Agreement between C.O.B.A. and the County of Westchester.

1.3 Upon the due resolution of the Trustees this trust may also be open and available to any other employees of the County of Westchester when such employees contribute to the Trust Fund directly or by reason of other contracts of employment or collective bargaining agreements executed by said County of Westchester and such employee or group of employees. Contracts or collective bargaining agreements

shall provide for contribution to the Trust Fund for the benefit of such other employee or employees.

1.4 The Trustees shall determine the use of such Trust in a form and manner to their exclusive satisfaction so long as such funds are utilized for the benefit of all employees as may be covered within the terms of said Collective Bargaining Agreements.

## ARTICLE II

### Definitions

Unless the context or subject matter herein otherwise requires, the following definitions shall govern in the interpretation of this Declaration of Trust.

2.1 C.O.B.A. shall mean the Westchester County Correction Officer's Benevolent Association Inc.

2.2 "Employee" shall mean any employees as are included within the Collective Bargaining Agreement executed between the County of Westchester and the C.O.B.A. and upon due resolution of the Trustees, any other employees within a contract or Collective Bargaining Agreement with the County of Westchester, which contract or Collective Bargaining Agreement provides for a payment to the Trust Fund for the benefit of such employee or employees of the County of Westchester, or such other former employees of the County of Westchester as the Trustees in their sole discretion may

decide by due resolution with respect thereto.

2.3 The "Trustees" shall mean the five (5) Trustees selected pursuant to the By-Laws of C.O.B.A.

2.4 The "Plan" shall mean the Plan or Program of Benefits to be established and administered by the Trustees pursuant to this Declaration of Trust.

2.5 "Fund" shall mean the Trust Fund created in this Declaration of Trust, and money and other things of value which are under the control and custody of the Trustees for the administration and operation of the Plan.

2.6 "Benefits" shall mean such benefits as shall be determined by the Trustees in their exclusive discretion.

2.7 "Contributions" shall mean the contributions made by the County of Westchester to the Fund in accordance with the Collective Bargaining Agreement as aforesaid or any subsequent collective bargaining agreements executed between the parties so described therein, and/or upon due resolution of the Trustees, by reason of contributions provided through a County of Westchester contract with other employees or payments by individuals whether present or former employees of the County of Westchester.

2.8 "Collective Bargaining Agreement" shall mean the Collective Bargaining Agreement as executed between the County of Westchester and C.O.B.A. dated October 30, 1986, or

any modifications or amendments thereof or any other agreements with like nature and purpose and any existing or future County of Westchester contracts with C.O.B.A., or other contracts for which receipt of contributions are authorized pursuant to paragraph 2.7 hereof.

### ARTICLE III

#### Trustees

3.1 The operation and administration of the Fund shall be the joint responsibility of five (5) Trustees who shall be appointed by the President of C.O.B.A. whose selection shall be ratified by a majority of the Executive Board of C.O.B.A. The initial Trustees shall be:

Thomas O'Neill

Robert DelBene

Roger King

Carol Merrill

Daniel Williams

3.2 Trustees shall serve for a term of three (3) years except initially Daniel Williams shall serve a term of one (1) year, Carol Merrill and Roger King shall serve for a term of two (2) years, and Thomas O'Neill and Robert DelBene shall serve for a term of three (3) years.

3.3 New terms shall be as of July 1 in each applicable year.

3.4 Successor Trustees shall be appointed by the President of C.O.B.A. whose selection shall

majority of the Executive Board of C.O.B.A.

3.5 Successor Trustees, upon the acceptance in writing by them of the terms of this Declaration of Trust, shall be vested with all the rights, powers and duties of their predecessors.

3.6 Any Trustee may resign from all further duty or responsibility hereunder upon thirty (30) days' written notice to each of the remaining Trustees and shall not be required to render an account. The resignation shall take effect upon the date specified in the notice unless a successor Trustee shall have been designated at an earlier date, in which event, the resignation shall take effect immediately upon the designation of such successor Trustee and said successor Trustee's acceptance in writing and written notice of such designation and acceptance to each remaining Trustee.

3.7 Any Trustee may be removed from office with or without cause pursuant to the By-Laws of the Association. In the event that a Trustee becomes incapacitated, resigns, is removed or vacates his or her office, his or her successor shall be immediately designated pursuant to the By-Laws of the Association. All Trustees must be employed in a position which is part of the negotiating unit included in the Collective Bargaining Agreement dated October 30, 1986

between C.O.B.A. and the County of Westchester. If a Trustee is no longer a member of the Collective Bargaining Unit, the individual's status as a Trustee is automatically terminated.

#### ARTICLE IV

##### Plan of Benefits

4.1 The Trustees shall promptly agree upon and adopt a Plan to provide such benefits as they, in their sole discretion, determine.

4.2 The Trustees shall, in their sole and absolute discretion, have full authority to determine all questions as to the nature, amount and duration of the benefits to be provided to the employees pursuant to the Plan and the Collective Bargaining Agreement.

4.3 The benefits shall be provided and maintained by such means as the Trustees, in their sole discretion, determine, consistent with the provisions of this Declaration of Trust.

4.4 The detailed basis on which payment of benefits is to be made pursuant to this Declaration of Trust, shall be specified in writing by the Plan, subject, however, to such change or modification by the Trustees from time to time as they, in their sole discretion, may determine. All such changes or modifications shall be specified in writing by appropriate resolution of the Trustees.

ARTICLE V

Powers, Duties and Obligations of Trustees

5.1 Notwithstanding any other provision of this Declaration of Trust, the Trustees shall have no power to modify the terms and conditions of the Collective Bargaining Agreement.

5.2 The Trustees are authorized and empowered, at the sole expense of the Fund, to lease or purchase such premises, materials, supplies and equipment, and to hire, employ and retain such legal counsel, administrative, accounting, actuarial, clerical and other assistants or employees as in their discretion they may find necessary or appropriate in the performance of their duties.

5.3 The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law:

(a) to establish and administer the Plan on behalf of the employees referred to in this instrument consistent with the provisions of this Declaration of Trust.

(b) to invest and reinvest all or such part of the Trust Fund, as they, in their absolute discretion, deem advisable, in such securities that are legal for the investment of trust funds under the laws of the State of New York.



(c) to pay over all or any part of the monies or other property comprising the Fund to a bank or to an investment advisory firm, in trust, or under such other terms and conditions as the Trustees, in their sole discretion, may deem advisable, with full power to hold, invest and reinvest the same in such securities that are legal for the investment of trust funds under the laws of the State of New York and to authorize such bank or investment advisory firm to accept any securities or property which may be issued upon any reorganization, recapitalization, consolidation, sale or merger of any corporation in which such bank or investment advisory firm may hold stocks, bonds or other securities and thereafter to hold such securities or property.

(d) to sell at public or private sale, to grant options, convert, redeem, exchange for other securities or property, or otherwise dispose of all or any securities or other property at any time held by them, for such consideration, and in cash or on credit, and upon such terms and conditions as they shall deem advisable.

(e) to enter into any and all contracts and agreements for carrying out the terms of this Declaration of Trust and for the administration of the Fund and to do all acts as they, in their discretion, may deem necessary and advisable, provided such discretion shall be exercised in a

uniform and non-discriminatory manner.

(f) to compromise, settle, arbitrate and release claims or demands in favor of or against the Fund or the Trustees, on such terms and conditions as the Trustees may deem advisable.

(g) to keep all or any of the Fund in such bank or trust company as they may select.

(h) to keep any securities or other property comprising the part of the Fund registered or held in the name of the Fund or in the name of a nominee of such bank or trust company.

(i) to have established and have accumulated, as part of the Fund, a reserve or reserves, adequate, in the opinion of the Trustees, to carry out the purpose of this Declaration of Trust.

(j) to have paid out of the Fund all taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Fund or any money, property, or securities forming a part thereof.

\* \* (k) to do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

\* \* (l) to do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary to

accomplish the general objective of enabling the Employees to obtain benefits consistent with the terms of this Declaration of Trust.

5.4 No Trustee acting hereunder shall be personally liable for any liabilities or debts of the Fund or for the proper discharge of the obligations created hereunder or under the Plan established pursuant thereto but the same shall be paid only out of the Fund and, until paid, shall constitute a charge upon such Fund.

\*\*\* 5.5 The Trustees and each individual Trustee shall not be liable for any error of judgment, or for any action taken upon advice of counsel, or for any loss arising out of any act or omission in the execution of their duties so long as they act in good faith and without willful misconduct or gross negligence; (or shall any Trustee, in the absence of his or her own willful misconduct, bad faith or gross negligence, be personally liable for the acts or omissions <sup>\*\*</sup> (whether <sup>\*\*</sup> performed at the request of the Trustees or not) of any other Trustee, or of any agent or attorney elected or appointed by or acting for the Trustees.\*\*)

\*\*\* 5.6 The Trustees shall be fully protected in acting upon any instrument, certificate or paper believed by them to be genuine and to be signed or presented by the proper person or persons and shall be under no duty to make any investigation

or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statement therein contained.\*\*\*

5.7 The Association shall in no way be liable in any respect for any of the acts, omissions or obligations of the Trustees, individually or collectively.

XXX 5.8 The Trustees shall keep true and accurate books of account and records of their transactions and shall report thereon at least annually to C.O.B.A. Such reports shall be available at all times for inspection by the C.O.B.A., at the principal offices of the Fund. The books of account of the Trustees and the records of their financial transactions shall be audited at least annually by a certified public accountant selected by the Trustees.

\*\*\* 5.9 The Trustees may authorize one of their number to execute jointly any notice, certificate, document or other instrument in writing, and all persons, partnerships, corporations, or associations may rely upon the foregoing as having been duly authorized and binding the foregoing as having been duly authorized and binding on the Fund and the Trustees.

5.10 All contributions required hereunder shall be paid directly to the Trustees, and all withdrawals of monies except for investments shall be made only upon authority in

writing by the Trustees. Except as authorized by due resolution of the Trustees, no authorization for withdrawal shall be valid unless signed by two Trustees.

#### ARTICLE VI

##### Meetings and Decisions of the Trustees

6.1 The Trustees shall meet as promptly as possible after the execution of this Declaration of Trust and elect a Chairperson and a Secretary, from among the Trustees. The terms of such officers shall commence on the date of their selection and continue for the duration of said officer's term as Trustee or until a successor is selected among the Trustees.

6.2 Meetings of the Trustees shall be held at such place or places as may be agreed upon by the Chairman and shall be called by the Secretary upon five (5) days' any time without such notice if all the Trustees consent thereto in writing.

6.3 At all meetings of the Trustees, the attendance of three (3) Trustees shall be required as a quorum for the transaction of business.

6.4 At a meeting of the Trustees a vote of three (3) Trustees shall constitute a vote of the Trustees.

6.5 Action by the Trustees may also be taken by them in writing without a meeting provided, however, that in such cases there shall be unanimous written concurrence on such

action by all the Trustees.

6.6 The Trustees shall keep full minutes of all their meetings, resolutions and actions. In the absence of the Chairperson, the Secretary shall act as Chairperson and the Secretary shall appoint another Trustee to act as Secretary for the meeting. In the absence of the Secretary, the Chairperson shall appoint another Trustee to act as Secretary for the meeting.

#### ARTICLE VII

##### Contributions to the Fund

7.1 The contributions to the Fund shall be those monies paid by the County of Westchester pursuant to the Collective Bargaining Agreement or any amendment, supplement or subsequent collective bargaining agreement, or by reason of any other contract between the County of Westchester and other such employees thereof, for former employees thereof, as otherwise permitted pursuant to this Declaration of Trust.

7.2 The Trustees may take any action necessary to enforce payment of contributions due hereunder by the County of Westchester including, but not limited to, proceedings at law and in equity.

ARTICLE VIII

Arbitration

8.1 In the event any differences or disputes arise under the Declaration of Trust or the Plan, which cannot be decided or resolved by the Trustees, or in the event the required affirmative vote cannot be obtained, or in the event a decision on a particular matter cannot be obtained because of the failure or refusal of any Trustee or group of Trustees to act, then and in any such event, such differences or disputes shall be submitted to arbitration in the County of Westchester, under the rules then obtaining of the American Arbitration Association.

8.2 Such arbitration proceeding may be instituted by any two of the Trustees. The award of the arbitrator shall be final and binding on all parties and persons concerned, provided, however, that the arbitrator shall have no authority to formulate the Plan or any part thereof, or determine any matters relating to an amendment or termination of the Plan. The award of the arbitrator shall neither amend, modify, alter or conflict with the provisions of the Declaration of Trust, the Plan or the Collective Bargaining Agreement.

8.3 Expenses of the arbitration shall be borne by the Fund, and the Trustees are authorized and directed to pay

such charges.

#### ARTICLE IX

##### Compensation and Expenses

9.1 The Trustees hereunder shall serve with or without such compensation as the Trustees may establish.

9.2 The expenses incurred by the Trustees in the performance of their duties hereunder, including proper charges and disbursements of the Trustees and expenses incurred in defending or prosecuting any action or actions brought by or against them by virtue of their official capacity shall be paid out of the Fund and, until paid, shall constitute a charge upon the Fund.

#### ARTICLE X

##### Amendment of Declaration of Trust

10.1 This Declaration of Trust may be amended from time to time by a majority vote of the Trustees. Any such amendment may be made applicable to the Fund as then or thereafter constituted, and such majority of Trustees shall have full power to fix the effective date thereof.

10.2 Any such amendment shall be in writing, and copies thereof shall be forwarded to the C.O.B.A. and all governmental agencies which may be required by law to be so notified.

10.3 Notwithstanding the foregoing, no amendment may be



adopted which will (a) alter the basic principles of this Declaration of Trust; (b) be contrary to the laws governing trust funds of this nature; or (c) be in conflict with the Collective Bargaining Agreement.

#### ARTICLE XI

##### Duration and Termination of the Fund

11.1 The Fund created by this Declaration of Trust is intended to continue during the existence of any Collective Bargaining Agreement which provides for contributions made as and for the benefits of the employees pursuant to said Collective Bargaining Agreement.

11.2 Upon the termination of the Fund, the Trustees shall continue as Trustees for the purpose of winding up the affairs of the Fund and shall apply the assets of the Fund to pay or to provide for the payment of any obligations of the Fund and shall distribute and apply any remaining surplus in such manner as will in their opinion best effectuate the purpose of the Declaration of Trust, provided, however, that no part of the assets of the Fund shall be diverted to purposes other than for the exclusive benefit of the employees, their families, beneficiaries or dependents, the administrative expenses of the Fund, and other payments in accordance with the provisions of this Declaration of Trust.

## ARTICLE XII

### Miscellaneous Provisions

12.1 No employee or any person claiming by or through such employee, including his family, dependents, beneficiary and/or legal representative, shall have any right, title or interest in or to the Fund, or any property of the Fund, or any part thereof, except as specifically provided for in the Plan or in this Declaration of Trust. Benefits under the Plan shall be payable only out of the Fund and only to the extent that there are available assets in the Fund. Neither the Trustees nor C.O.B.A. shall have any legal obligation, responsibility or liability for any loss or depreciation of the Fund nor the payment of any benefit under the Plan or under this Declaration of Trust.

12.2 No monies, property, or equity, of any nature whatsoever, in the Fund, or policies, benefits or monies payable therefrom, shall be subject in any manner by any employee or person claiming through such employee to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, garnishment, mortgage, lien or charge, and any attempt to cause the same to be subject thereto shall be null and void.

12.3 No person, partnership, corporation or association dealing with the Trustees shall be obligated to see to the

application of any funds or property of the Fund or to see that the Trustees have complied with the terms of the Declaration of Trust. Every instrument executed by the Trustees shall be conclusive in favor of any person, partnership, corporation or association relying thereon that:

(a) at the time of the delivery of said instrument, the Declaration of Trust was in full force and effect.

(b) the instrument was executed in accordance with the terms and conditions of the Declaration of Trust.

(c) the Trustees were duly authorized and empowered to execute the instrument.

12.4 Each of the provisions of this Declaration of Trust shall be deemed to be separate and distinct, such that in the event any portion of this Declaration of Trust shall be held by a court of competent jurisdiction to be illegal and unenforceable as to any of the parties hereto, all other provisions hereof shall be valid and enforceable as to each of the parties hereto.

12.5 Wherever any words are used in this Declaration of Trust in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and wherever any words are used in this Declaration of Trust in the singular form, they shall be construed as though they were also used

in the plural form in all situations where they would so apply, and wherever any words are used in this Declaration of Trust in the plural form, they shall be construed as though they were also used in the singular form in all situations where they would so apply.

12.6 The address of each of the Trustees shall be that stated on the signature page of the Declaration of Trust. Any change of address shall be effected by written notice to the Trustees.

12.7 This Declaration of Trust is accepted by the Trustees in the County of Westchester in the State of New York, and such place shall be deemed the situs of the Fund created hereunder. All questions pertaining to the validity, construction and administration shall be determined in accordance with the laws of the State of New York.

#### ARTICLE XIII

##### Execution

13.1 This Declaration of Trust may be executed in one or more counterparts, and the signature of a party or the Trustees on any counterpart shall be sufficient evidence of his or its execution hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Declaration of Trust the day and year first above set forth.

WESTCHESTER COUNTY CORRECTION  
OFFICER'S BENEVOLENT ASSOCIATION, INC.

By: \_\_\_\_\_  
Thomas O'Neill, President

WESTCHESTER COUNTY CORRECTION  
OFFICER'S BENEVOLENT ASSOCIATION  
WELFARE TRUST FUND

By: \_\_\_\_\_  
Thomas O'Neill

By: \_\_\_\_\_  
Robert Del Bene

By: \_\_\_\_\_  
Roger King

By: \_\_\_\_\_  
Carol Merrill

By: \_\_\_\_\_  
Daniel Williams