

Malcolm Cooke
President, Board of Directors
The Arc of Loudoun
601 Catoclin Circle NE
Leesburg, VA 20175

July 5, 2024

Ms. Melinda Hetzel, Ms. Paige Buscema, Ms. Mary Lou Leipheimer
Trustees, The Margaret Paxton Memorial for Convalescent Children
4 Cornwall Street NE
Leesburg, VA 20176

Dear Trustees,

On behalf of the Board, staff, families, clients, and students at The Arc of Loudoun, I am writing to express our dismay at the state of our lease negotiations and the latest lease amendment proposed by the Trustees. As stewards of a nonprofit corporation that serves one of our community's most vulnerable populations—people with disabilities—from West Virginia to Washington, DC, we cannot sign this amendment.

To be absolutely clear: as we have warned throughout these discussions, the terms upon which the Trustees are insisting would force The Arc of Loudoun to close. That would end critical services for the more than 5,000 people across the region that we serve each year. It would mean:

- 50+ students at Aurora School will have no place to turn for the education and related support they need;
- More than 50 families each year could no longer send their children to preschool at the Open Door Learning Center nor access the critical services provided by the Claude Moore Center for Early Intervention;
- Nearly 150 children each year would no longer receive the therapies they rely upon at Aurora Behavior Clinic;
- More than 60 people with neuro-physical disabilities would lose their fitness and wellness community at Ability Fitness Center;
- Thousands of people each year would go without the critical guidance, events and resources of ALLY Advocacy Center;
- The largest private employer in Leesburg's Historic District would be forced to close, and more than 100 highly skilled, hardworking professionals who have dedicated their lives to serving the most vulnerable in our region would see their lives upended.

While the Trustees for months have declined our offers to meet, insisting on communicating through their attorney, we believe the state of this negotiation warrants a fresh start and meetings directly between the Trustees and The Arc's leadership. This is now an urgent matter; these lease negotiations started in 2021, we are on the 23rd version of a lease amendment without resolution, and our lease ends August 31, 2024.

As we have consistently repeated, this campus has been a safe haven for our clients and students, and we wish to stay here and are committed to working with the Trustees on a viable long-term solution. Although nothing in this letter will be new to the Trustees, I will repeat our chief concerns and our vital requests:

- Agree to at least a five-year extension of the lease.
- Remove the unilateral “non-disparagement” clause that attempts to give the Trustees the power to censor The Arc on this topic.
- Lower or eliminate the proposed rent in recognition of The Arc's important work, maintenance of the property, and fulfillment of the Trust's mission.
- Consider donating or selling the campus to The Arc so that we can create a realistic, collaborative home for a range of partner nonprofits, or let us help realize that vision.
- Return to good-faith negotiations with The Arc.

The Lease Term

The Trustees insist upon a lease amendment that would push The Arc off campus after two years. The Trustees also insist upon including language that The Arc “acknowledges that the Term as extended by this Amendment provides sufficient time for Tenant to identify and relocate to a new location.” This is not only extremely unusual language for a lease agreement—as we have advised throughout these negotiations, it is untrue.

Even if there were a new campus site available today, it is not feasible to fundraise for a relocation and relocate an organization of The Arc's size and complexity in that time. As we have shared repeatedly with the Trust, based on outside expert advice and our leadership's experience, such a relocation effort is a five-year project—even the previous three-year compromise would likely have required another lease extension.

Additionally, our Open Door Learning Center Preschool and Aurora School are both fully accredited by the Virginia Department of Education, and the Aurora School is also accredited through the Virginia Association of Independent Specialized Education Facilities. The re-accreditation process alone when moving to a new facility can take years to complete.

At the end of two years, with no option to extend our current lease, The Arc of Loudoun would be forced to close.

The Trustees' proposed clause outlining the terms for The Arc to negotiate remaining on campus is untenable for the same reasons we have outlined to the Trustees before. An independent study by our architectural firm, shared first with the Trust in 2022, has confirmed that the proposed site in the southwest corner of campus is too small for The Arc's needs, and the history suggests the surrounding neighborhood will not tolerate development in that area of campus.

We request a minimum five-year extension of the lease term to provide both parties the time needed for a good-faith discussion of the best way forward.

The Unilateral “Non-disparagement” Clause

We are troubled by the one-way “non-disparagement” clause, another unusual inclusion in a lease agreement which appears written to give the Trust free rein to muzzle The Arc of Loudoun. Unlike legal doctrines such as libel or defamation, under which truth is an absolute defense, the undefined “disparagement” term appears to give the Trustees broad, discretionary powers to silence The Arc of Loudoun on any matter relating to the campus or lease.

We are even more troubled that, having previously agreed to make this clause mutual, the Trust now feels it must protect its ability to disparage The Arc of Loudoun in public while claiming authority to censor The Arc, even for two years after the lease ends.

We request this unusual clause be removed, or at the very least, that the Trustees return to their previous agreement that it should be mutual.

The Proposed Rent

We have offered to pay rent since 2021 and remain open to that conversation, but we note that the Trustees' proposed “abated” rent would be the second-highest rent for a single location paid by any charitable nonprofit in Loudoun—including some with campuses even larger than Paxton Campus.

We also note that since coming to campus in 2009, the Arc of Loudoun's triple-net lease has seen us cover all expenses associated with the property—insurance, any possible real estate tax, and all maintenance of campus. We have invested millions in renovations of every building we occupy. The campus's current tax-exempt status was approved based on an application stating that The Arc of Loudoun enjoys use of the entire property, pays no rent, and that the Trust donates, at least annually, all of the income from its endowment to The Arc. We now have seen parts of campus removed from our lease, the Trustees ended their donations in 2017, and we are discussing \$150,000 dollars in rent.

We request the Trust return to its longstanding recognition of our important work, our investment in the campus, and our fulfillment of the Trustees' responsibility to serve needy children with a continued zero-dollar triple-net rent until a new lease

is negotiated; or at the very least, negotiate in good faith a rate that will allow us to continue our upkeep of the property while saving for new facilities, whether on or off campus.

The Trust's Plans for Campus

We understand that the Trustees wish to see the campus developed to welcome more nonprofits that serve needy children. As we have emphasized throughout these discussions, we have a long history of building partnerships and hosting other charitable nonprofits, and we are eager to take on such a project or lend our expertise to the Trust's campus planning. In fact, for years we have offered to buy the campus to take on a similar project, and the Trustees have been advised by many nonprofit and philanthropic leaders in the community—including at least one of the Trust's own advisors copied here, Mr. Northrup—that selling or donating the campus to The Arc would be the best course of action. That offer remains on the table, and would be the surest, simplest path to create the mosaic campus that the Trustees envision.

However, we have serious concerns about the feasibility of the Trustees' ideas for campus as they have been explained to us. Leaving aside the regulatory hurdles and likely community opposition to an intense redevelopment of campus, the Trust's previous proposals are simply not realistic:

- The Arc would conduct all fundraising and construction for that development “without the Trust being materially involved.”
- Following receipt of certificates of occupancy, the Trust would take over full ownership of the facilities that The Arc funds and builds.
- The Trust would charge The Arc rent to occupy the facilities that The Arc funded and built.
- The Trust would dictate which of The Arc's current programs could remain on campus, set metrics for our programs, and determine if, how, and when The Arc would grow to meet the ever-expanding need for services.

With our staff's expertise, experience and connections, The Arc is more than capable of bringing about a realistic, innovative and impactful mosaic project on campus that honors the Paxton family's legacy while remaining good neighbors and good stewards of the land. We can create a new, collaborative home for community partners that allows for the long-term stability that we need to continue to grow and serve more children with disabilities here on campus.

We ask the Trustees to donate or sell Paxton Campus to The Arc of Loudoun for such a campus or, at the very least, let us help make that shared campus a reality.

A Good Faith Partnership

As part of our longstanding agreement, since 2009 we have happily taken on the Trust's responsibility to serve needy children.

It is saddening to see our relationship deteriorate despite our many attempts to work collegially with the Trustees. For years, the Trust was one of The Arc's biggest supporters through the generous lease agreement signed in 2008. Children at The Arc of Loudoun enjoy crucial wraparound services from all our current programs—closing our programs harms the services we can provide to those children. Prior to 2017, when the Trustees forced the closure of two of our programs (Maggie's Closet and STEP Up), all of our programs had been welcomed on campus. And today, the Trustees are the biggest threat to our continued operations—and a major drain on resources that could be serving people with disabilities.

Consider the loss of our use of the manor. Our major annual fundraiser Shocktober and related events such as My Bloody Valentine were staples of the community that drew visitors from across the Mid-Atlantic and brought significant business to Loudoun's tourism and hospitality industry for more than a decade.

In 2021, The Arc of Loudoun's board was forced to sign a three-year amendment that removed the manor from our lease. This forced The Arc to end Shocktober and related manor-based fundraising, with the Trustees publicly accusing The Arc of allowing the manor to fall into disrepair. This was not the case—The Arc had invested at least \$100,000 in our own operational funds to repair and maintain the manor over the years. We have previously shared with you an independent structural engineering study—conducted at our expense—which, when compared to a study conducted by the same independent firm in 2007 before The Arc moved onto campus, indicated that the building was returned to the Trust in far better condition than when The Arc took stewardship of it. The Trust has never corrected their public statements accusing The Arc of allowing the manor to deteriorate.

Shocktober grossed more than \$4 million over its 11 years, with revenue growing 20% on average each year since 2018. Its last year in 2021 set another record for gross revenues, and netted close to a half-million dollars for The Arc of Loudoun despite the Trustees' demand to pay 15% of gross revenues to the Trust and purchase increased insurance. That lease amendment also shortened our lease by four years, and forced us to vacate the manor including all equipment supporting the campus's network hub, an unbudgeted expense of more than \$40,000.

Under this proposal, the loss of manor-based fundraising combined with the proposed rent would mean that the Trustees would cost The Arc more in a year than three of our five programs.

We are a rock-solid organization and longtime good-faith partner to the Trustees. The Arc of Loudoun's staff have shown remarkable adaptability and financial savvy—despite that loss and

the impacts of the COVID-19 pandemic, The Arc of Loudoun runs a balanced \$8 million budget, and our overall revenues have increased by 48% over the past five years. We have expanded into every nook and cranny available to us on campus, and our programs are at capacity and have waiting lists. The demand for our services is only growing.

We ask the Trustees not to repeat history and force us to sign a lease amendment that would cause further harm, and instead to come back to the table in good faith as a renewed partner.

Over the past three years we have tried every avenue and extended every olive branch. We have met the Trustees' every request, providing internal documents, shuttering programs, and even diverting funding from serving people with disabilities to the Trust. We have formally presented our Strategic Plan to the Trustees and your Board of Visitors, hosted a social gathering for Trustees and Visitors, and provided numerous tours of campus. We have absorbed the substantial labor costs of meeting with the Trust's consultant, architects, advisors, and the Trustees themselves all to no avail, and we are now at a critical juncture.

People with disabilities across the region—including many needy children—will lose essential services if the Trustees do not turn away from this destructive path.

I regret that this must be an open letter. Over years of negotiations, we have sought to keep these discussions private as another act of good faith, but we are out of options in this negotiation, and we must use every means available to protect our staff and the people we serve.

We hope the Trustees will come back to the table to negotiate an agreement that restores our partnership's success, achieves our mutual goals, and does no further harm to The Arc of Loudoun, our staff, or most importantly, the thousands of people with disabilities across the region—primarily children—who we serve.

Respectfully,



Malcolm Cooke
President, Board of Directors
The Arc of Loudoun

CC Mr. Jay Chadwick
Mr. Peter Burnett
Mr. Tom Northrup