

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT AND INSTRUCTIONS hereinafter referred to as this "Agreement" made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (the "Community"), which \_\_\_\_\_ on its own behalf and also on behalf of its controlled affiliate \_\_\_\_\_, an Illinois not-for-profit corporation collectively hereinafter referred to as the "Provider," and \_\_\_\_\_ hereinafter referred to "Bank."

WHEREAS, Provider is in the process of developing a continuing care retirement community in \_\_\_\_\_ (the "Facility");

WHEREAS, Provider intends to operate the Facility as a life care facility, as defined under the Illinois Life Care Facilities Act (the "Act");

WHEREAS, under the Act, a Life Care Facility is required to establish an escrow account with a bank or trust company located in Illinois to hold certain funds of such facility;

WHEREAS, Provider desires to contract with Bank, as escrow agent, to receive and hold entrance fee deposits received by Provider pursuant to its agreements with prospective residents, and to hold such funds pursuant to requirements of the Illinois Life Care Facilities Act; and

WHEREAS, Bank is willing to act in such capacity, but only upon the terms and conditions set forth herein;

NOW, THEREFORE, it is agreed that Bank shall be and is hereby appointed escrow agent for the purpose of receiving entrance fee deposits received by Provider as a result of entering into agreements within the State of Illinois. The funds shall be deposited with the Bank by Provider on behalf of each prospective resident pursuant to the terms of the Reservation Agreement and Residence Agreement, attached to and made part of this Agreement as Exhibits B and C, respectively. Such funds will not include any non-refundable application fees. Bank, as escrow agent, agrees to keep full and proper accounts of the names of the prospective residents, and the amount of the proceeds paid and interest earned by each such prospective resident, and further agrees to hold the entrance fees which are deposited intact subject to the following provisions and requirements. Bank shall produce any required 1099 statements for prospective residents.

A. Provider shall deposit with Bank all entrance fee deposits received by it prior to the date a prospective resident is permitted to occupy his or her living unit in the community, together with a receipt showing the name, address and amount of deposit of such prospective resident. Bank shall hold all such deposits in a single escrow account (the "Escrow Account") which shall only be released or refunded as follows:

1. Upon a receipt by the Bank of a certificate from the Provider stating that the entrance fee applies to a unit that has been previously occupied in the Facility, a resident's

entrance fee shall be released to Provider at such time as Bank is notified in writing by Provider that the unit has become available for occupancy by the new resident.

2. Upon the occurrence of each of the following events, Bank shall release a sum representing one-fifth (1/5) of each resident's entrance fee to Provider:

(a) When Provider certifies to Bank that Provider has sold one-half of the Facility's living units, obtained a mortgage commitment, and obtained all necessary zoning permits and certificates of need as applicable.

(b) When Provider certifies to Bank that the resident's unit's foundation has been completed.

(c) When Provider certifies to Bank that the Unit is under roof.

3. When Provider certifies to Bank that the resident's unit is ready for occupancy, Bank shall release the remainder of the resident's entrance fee to Provider. The release of the remaining Escrow Fund balance for the last resident's unit that is ready for occupancy in accordance with the terms of this Agreement shall wholly discharge Bank from all responsibility hereunder and shall terminate this Agreement.

B. If the funds in an escrow account required to be established under paragraph A are not released within such time as provided by rules and regulations issued by the Director, then such funds shall be returned by Bank to the persons for whom the deposit was made to the escrow account; provided, however, that the Bank shall not be responsible to make an independent determination as to such time limit but shall be required only to act upon the written direction of the Director or Provider;

C. An entrance fee held in escrow may be returned by the Bank to the person or persons who had made payment to the Provider at any time upon receipt by the Bank of notice from the Provider that such person is entitled to a refund of the entrance fee.

D. The principal of the escrow account shall be invested, with the earnings plus any such addition to earnings as the Provider may contribute. Earnings including any addition to earnings Provider may contribute shall be allocated to prospective resident accounts. Bank shall invest such Funds in the Goldman Sachs Treasury Instruments Fund or a successor or similar fund.

E. Bank shall be entitled to rely and act upon any notice, request, waiver, consent, receipt or other paper or document believed by Bank to be genuine and to be signed by the proper party or parties.

F. Bank shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or refrain from doing in connection herewith, except in its own gross negligence and willful misconduct, and Bank shall have no duties or obligations to anyone except those signing these instructions.

G. Bank may consult with legal counsel in the event of any dispute or question as to the construction of the foregoing instructions, or Bank's duties thereunder, and Bank shall incur no liability and shall be entitled to rely and act in accordance with the opinion and instructions of such counsel.

H. In the event of any disagreement between the undersigned or any of them, and/or the person or persons named in the foregoing instructions, and/or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved hereunder or affected hereby, Bank shall be entitled at its option to refuse to comply with any such claim or demand, so long as such disagreement shall continue, and in so doing Bank shall not be or become liable for damages or interest to the undersigned or any of them or to any person named in the foregoing instructions for its failure or refusal to comply with such conflicting or adverse demands; and Bank shall be entitled to continue so to refrain and refuse so to act until the rights of the adverse claimants have been finally adjudicated in a court assuming and having jurisdiction of the parties and the money, papers, and property involved herein or affected hereby; and/or all differences shall have been adjusted by agreement and Bank shall have been notified in writing signed by all of the persons interested.

I. In the event of such disagreement, Bank in its discretion, upon not less than ten (10) days' prior written notice to Provider and the director, may file a suit in interpleader for the purpose of having the respective rights of the claimants adjudicated, and deposit with the court all documents and property held hereunder, and Provider agrees to pay all reasonable costs and counsel fees incurred by Bank in such action and said costs and fees may be included in the judgment in any such action.

J. All fees and reasonable expenses of Bank which are set forth in Exhibit A, attached hereto, including without limitation reasonable attorneys' fees of independent counsel retained by Bank and approved in advance by Provider, shall be payable by Provider. If Provider fails to make any payment of fees and reasonable expenses required pursuant to the terms of this Agreement within forty-five (45) days after such request is made by Bank, Bank may pay itself the amount so required from excess money on deposit in the escrow account. In addition, Provider agrees to indemnify and save and hold harmless Bank from all losses, liabilities, costs and expenses, including attorney fees and expenses, which may be incurred by it as a result of its acceptance of the Escrow Account or arising from the performance of its duties hereunder, unless such losses, liabilities, costs and expenses shall have been finally adjudicated to have resulted from the bad faith, gross negligence or willful misconduct of Bank, and shall indemnification shall survive its resignation or removal, or the termination of this Agreement.

K. Provider may at any time terminate this Agreement and appoint a successor escrow agent in place of Bank. Bank may at any time resign, in which event Provider shall appoint a successor escrow agent with approval of the Director. Upon transfer of all funds held hereunder to the successor escrow agreement, Bank shall be released of all duties and obligation hereunder.

**L. Notice Section:**

If to Provider:

\_\_\_\_\_

\_\_\_\_\_

Facsimile \_\_\_\_\_

If to Bank:

\_\_\_\_\_

\_\_\_\_\_

Facsimile \_\_\_\_\_

IN WITNESS WHEREOF, the parties have hereunder set their hands the day, month and year first above written.

\_\_\_\_\_  
a state banking corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_