

Living Care Disclosure Act Escrow Agreement

THIS AGREEMENT, made this _____ day of _____ between _____ (hereinafter Facility), a corporation, partnership, limited liability company, or other legal entity organized under the laws of the State of Michigan, and _____ (hereinafter Escrow Agent), a banking corporation organized under the laws of the State of Michigan, as Escrow Agent for purchasers of life interests or long-term leases, and such purchasers as become signatories to this Escrow Agreement.

WITNESS THAT:

WHEREAS, an application, pursuant to the Michigan Living Care Disclosure Act, 1976 P.A. 440, as amended (the "Act"), has been filed with the Michigan Department of Energy, Labor & Economic Growth, Office of Financial and Insurance Regulation, seeking effective registration or exemption under the aforementioned law or rules thereunder; and

WHEREAS, as a condition of registration or exemption the Administrator of the Michigan Office of Financial and Insurance Regulation will require pursuant to the authority granted in Section 16 of the Act the escrow of an amount deemed necessary, by the Office of Financial and Insurance Regulation, for the facility to fulfill its obligations and to protect prospective and present members; and

WHEREAS, for the purposes of this Agreement, Administrator means the Commissioner of the Office of Financial and Insurance Regulation, Michigan Department of Energy, Labor & Economic Growth or designee.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties hereto agree as follows:

1. **PROCEEDS TO BE PLACED IN ESCROW:**

All proceeds received from the sale of life interests or long-term leases and other funds paid by purchasers which are subject to this Escrow Agreement on or after the date hereof shall be paid to the Escrow Agent promptly, but in any event, within two (2) business days from the date of sale or receipt and deposited by Escrow Agent in an escrow account. During the term of this Escrow Agreement, the Facility shall cause all checks received by it in payment for such life interests or long-term leases to be payable to the Escrow Agent. All funds held by the Escrow Agent pursuant to this Escrow Agreement shall be held solely for the benefit of the purchasers, until such time as the Administrator, by Order, authorizes release to the Facility as provided in Section 3 hereof.

2. **IDENTITY OF PURCHASERS:**

The Facility shall furnish to the Escrow Agent with each deposit of funds in escrow a list of the persons who have paid the money, showing the name, address, social security number, date and price of deposit agreement and amount of money paid. All proceeds so deposited, together with all income earned thereon (less fees of the Escrow Agent) shall remain the property of the purchaser and shall not be subject to any liens or charges by the Escrow Agent, or judgments or creditors' claims against the Facility until released to the Facility as hereinafter provided. Income earned on all escrowed funds shall be the property of the purchaser during the

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period prior to occupancy of the unit. At occupancy, the income earned on all escrowed funds during the period prior to occupancy shall be credited to the account of the purchaser and shall be an offset against the remainder of the Entrance Fees that are owed to the Facility. After occupancy, the income earned on a purchaser's escrowed funds shall be the property of the Facility. The Escrow Agent shall annually notify the Facility of the amount of income earned on the escrowed funds, and shall issue a single Internal Revenue Service Form 1099 to the Facility, as agent for the purchasers, for all income earned on the escrowed funds for the calendar year. The Facility shall thereafter assume full responsibility for notifying each purchaser and the Internal Revenue Service of the amount thereof that is taxable to each such purchaser and for issuing an Internal Revenue Service Form 1099 to each purchaser.

3. DISBURSEMENT OF FUNDS

a) Upon receipt by the Escrow Agent of a request from any purchaser for the release of the purchaser's funds, plus all income earned thereon, the Escrow Agent shall notify the Facility which shall promptly assist the Escrow Agent in verifying the validity of the request and determining the amount of income to which the purchaser is entitled. Upon receipt of written confirmation from the Facility as to the validity of the request, and the amount of income to be paid, the Escrow Agent shall promptly release the escrowed funds and income so verified to the purchaser. The Facility shall indemnify and hold harmless the Escrow Agent from any claims arising from verification of the validity of the request and from the allocation of income to be paid in connection with any such request.

b) Upon receipt by the Escrow Agent of written authorization from the Administrator, then said Escrow Agent, shall pay over to the Facility all escrowed funds, as so authorized, including income earned thereon. If the conditions of the escrow (see attached pages for specific conditions of escrow, if any) have not been satisfied, upon written authorization of the Administrator, the Escrow Agent shall within a reasonable time, but not more than thirty (30) days after authorization, refund to each purchaser at the address appearing on the life interest or long-term lease Purchase Receipt or list of purchasers, or at such other address as shall be furnished the Escrow Agent by the purchasers in writing, all sums paid by such purchaser pursuant to the life interest or long-term lease agreement plus any income accrued thereon, and shall then notify the Administrator in writing of such refund.

c) From and after the date that each purchaser begins occupancy of a unit, and notwithstanding anything in this escrow agreement to the contrary, one and one-half percent (1 ½%) per month of the total entrance fees in escrow for that purchaser from and after the occupancy date shall be considered earned by the Facility and this amount shall be disbursed on a monthly basis to the Facility, upon demand by the Facility which demand shall include the calculation of the amount of the monthly disbursement so earned, and upon the written authorization of the Administrator. This paragraph applies only subsequent to the date of occupancy by purchasers whose funds are in escrow. The Escrow Agent shall have no responsibility to calculate or confirm the accuracy of any calculations.

4. TERM OF ESCROW:

This escrow shall terminate upon written authorization of the Administrator. Upon termination hereof, the Escrow Agent shall disburse the funds in the escrow account in the manner and upon the terms directed in paragraph 3(b), hereof. The Facility may abandon the sale of life interests or long-term leases at any time. Upon the receipt of a copy of the Resolution authorizing said abandonment, duly attested to by the Secretary of the Facility accompanied by the written consent of the Administrator, the Escrow Agent shall be authorized to refund the monies received from the purchasers and all income earned with respect to such funds. The Escrow Agent shall have no responsibility to calculate or to confirm the accuracy of the calculation of amounts due to each purchaser.

5. TERMINATION BY REVOCATION:

If at any time prior to the termination under paragraph 4, of this escrow, said Escrow Agent is advised by the Administrator that the registration or exemption of the Facility has been revoked, said Escrow Agent shall thereupon return all funds, including any interest accrued or earned thereon, to the respective purchasers.

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6. CONSENT OF ADMINISTRATOR TO RELEASE FUNDS:

No funds shall be released to the Facility hereunder except upon the express written authorization of the Administrator. If the Administrator finds that any conditions of this Agreement have not been satisfied, or that any provisions of the Act or Rules have not been complied with, then he may withhold such authorization for release of funds by the Escrow Agent to the Facility and may direct the Escrow Agent to return the funds to the purchasers. In making his determination hereunder, the Administrator may require from the Facility a statement of all expenses and/or all amounts paid into the escrow, certified by an independent certified public accountant and any further financial or other information as the Administrator may deem appropriate or helpful in making such determination.

7. INSPECTION OF RECORDS:

The Administrator may, at any time, inspect the records of the Escrow Agent, insofar as they relate to this Escrow Agreement, for the purpose of determining compliance with the provisions of this Escrow Agreement. At the Administrator's discretion, statements indicating the status of the escrow shall be furnished by the Escrow Agent to the Administrator.

8. DUTY AND LIABILITY OF THE ESCROW AGENT:

The sole duty of the Escrow Agent, other than as herein specified, shall be to receive said funds and hold them subject to release, in accordance with the written instructions of the Administrator, and the Escrow Agent shall be under no duty to determine whether the Facility is complying with the requirements of the Act or Rules.

The Escrow Agent may conclusively rely upon and shall be protected in acting upon any statement, certificate, notice, request, consent, order or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall have no duty or liability to verify any such statement, certificate, notice, request, consent, order or other document and its sole responsibility shall be to act only as expressly set forth in this Escrow Agreement. The Escrow Agent shall be under no obligation to institute or defend any action, suit or proceeding in connection with this Escrow Agreement unless first indemnified to its satisfaction. The Escrow Agent may consult counsel in respect of any question arising under this Escrow Agreement and the Escrow Agent shall not be liable for any action taken or omitted in good faith upon advice of such counsel.

9. ESCROW AGENT'S FEE:

The Escrow Agent shall be entitled to reasonable compensation for its services. The fee agreed upon for services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Agreement; provided, however, in the event that the conditions of this Escrow Agreement are not fulfilled, or the Escrow Agent renders any material service not contemplated in this agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to or justifiably intervenes in any litigation pertaining to this Escrow Agreement, or the subject matter hereof, the Escrow Agent shall be reasonably compensated for such extraordinary service and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation or event, and the same may be recoverable from the Facility only. An initial fee schedule shall be attached to this Agreement and initialed by authorized representatives of Escrow Agent and Facility.

10. BINDING AGREEMENT AND SUBSTITUTION OF ESCROW AGENT:

The terms and conditions of this Agreement shall be binding on the heirs, executors and assigns, creditors or transferees, or successors in interest, whether by operation of law or otherwise, of the parties hereto. If, for any reason, the Escrow Agent named herein should be unable or unwilling to continue as such Escrow Agent, then the other parties to this Agreement may substitute, with the consent of the Administrator, another Escrow Agent. Any apportionment of the fees provided for in paragraph 9 will be subject to agreement of the parties. Provided further, that Escrow Agent may resign at any time upon thirty (30) days prior written notice to

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the Facility and the Administrator. Escrow Agent shall follow the written directions of the Administrator concerning disposition of all escrowed funds during such thirty (30) day period. If Escrow Agent does not receive written instructions from the administrator within such thirty (30) day period, then Escrow Agent may commence an action in the nature of interpleader in Circuit Court, pay all escrowed funds into court, and notify the Administrator, the Facility and all parties having funds in escrow of such actions, in writing. Thereafter, Escrow Agent shall have no further duties hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement on the date first above written.

Facility _____

Escrow Agent _____

By _____

By _____

Date _____

Date _____

When complete, please return to:
Office of Financial and Insurance Regulation
P.O. Box 30701
Lansing, MI 48909-8201

Our Overnight Delivery Address:
Office of Financial and Insurance Regulation
Securities Section
611 W. Ottawa Street, 3rd Floor
Lansing, MI 48933

This form is issued under Sections 10 and 16 of Act 440, PA of 1976, as amended, and Rules 31, 32, 33, 34 and 35.



Michigan Department of Energy, Labor & Economic Growth

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