

**COMMUNITY LIVING CORPORATION, INC.
POOLED TRUST 3 AGREEMENT
(A TRUST FUNDED BY PEOPLE WITH DISABILITIES)**

Dated: March 5, 2020

**Community Living Corporation, Inc.
135 Radio Circle Drive
Mount Kisco, New York 10549
Phone: (914) 241-2076**

Tax Identification Number: 84-7096055

WHEREAS, Community Living Corporation, Inc., (“CLC” or “Grantor”) is a not-for-profit organization incorporated in New York State with a principal office located at 135 Radio Circle Drive, Mount Kisco, New York 10549; and

WHEREAS, CLC wishes to establish a Pooled Surplus Income Trust.

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

1. ESTABLISHMENT AND PURPOSE OF TRUST

1.1 **Name of Trust** This Trust shall be known as the “CLC Pooled Trust 3” (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 Joinder 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 shall pool these accounts and manage them collectively. The purpose of this Trust is to receive the excess income of community Medicaid recipients and to supplement, and not supplant, impair or diminish government benefits or assistance, which the beneficiary is receiving. All distributions shall be made in the Trustees’ sole and absolute discretion in accordance with the terms of this document.

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 Designated Beneficiary, the Designated Beneficiary’s parent, grandparent, legal guardian, spouse or by a court.

2.2 **Funding of Trust Accounts** A Trust Account shall be funded with the surplus income of the Designated Beneficiary (otherwise known as the “overage” income), which would otherwise be considered available to the Designated Beneficiary for purposes of determining eligibility for government benefits.

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

2.4 **Execution of Joinder Agreement** This Trust is applicable to an individual Designated Beneficiary when a Joinder 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 Joinder Agreement and held and administered pursuant to the terms and provisions of this Trust Agreement. By executing a Joinder Agreement, a Sponsor agrees to all the terms and conditions of this Trust Agreement and any amendments hereto.

2.5 **Trust Account Designated Beneficiaries** Each Joinder Agreement shall designate the Designated Beneficiary for whom a Trust Account is established.

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 Trustees. This additional property, upon acceptance by the Trustees, shall become a part of the trust and be held and managed for the benefit of the Designated Beneficiary. Notwithstanding the foregoing, the trustees shall only accept property that the designated beneficiary had a right, title or interest in. The trustees shall not accept property from third parties.

3.2 **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.

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 an initial minimum contribution of two (2) months' surplus income, as determined by the Department of Social Services in the county in which the Designated Beneficiary lives, plus the initial administrative fees charged by CLC.

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 Joinder Agreement. The Trustee, in 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 who contributes to the Trust shall not be permitted to revoke a Joinder 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.

5.2 **Management of Trust Accounts** The Trustee is authorized to pool, commingle and jointly manage 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 **Accounting and Filing** For accounting purposes, the Trust shall be operated on a calendar year basis. The Trustee, or its authorized agent, shall maintain records for each Trust sub-trust account in the name of, and showing the property contributed for, each Designated Beneficiary. Periodic accounts not less often than annually shall be sent to each Designated Beneficiary and/or the appropriate representatives or designees of each Designated Beneficiary, showing additions to and disbursements from the funds held on account in Trust for that Designated Beneficiary during the preceding calendar year. The Trustee shall be required to comply with all relevant federal, state and local laws and all court orders.

5.4 **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.

5.5 **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.

5.6 **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 5.7 below.

5.7 **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 affect the Designated Beneficiary's government benefits.

5.8 **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.

5.9 **Spendthrift Provision** The interest of a Designated Beneficiary 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.

5.10 **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 permissible administrative expenses such as (a) taxes due to the State(s) or Federal government because of the death of the Beneficiary and (b) reasonable fees for administration of the Trust Account such as an accounting of the Trust Account to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the Trust Account, the remaining balance of the Trust Account shall be credited to the "Remainder Account" which amount may be used for the purpose of (a) 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, (b) providing indirect supplemental needs assistance to or on behalf of individuals with disabilities and (c) meeting the 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 Account, to be used in furtherance of the purpose of the Trust, the Trust shall pay to the States from such deceased Beneficiary's account any remaining amounts equal to the total amount of medical assistance paid on behalf of the Designated 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 shall be those selected by CLC and are identified on Appendix A.

8.2 **Successor Trustees.** 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 CLC's 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 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.

9. INDEMNIFICATION

9.1 The Trustees shall act prudently with due care, in good faith and with due diligence and shall not be liable for any error of judgment, or for any loss arising out of any act or omission in the management of this Trust, so long as it so acts.

9.2 The Trustees shall be fully protected in acting upon any instrument, certificate or paper believed by it to be genuine and to be signed or presented by the proper person or persons, and the Trustees 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 conclusive evidence of the truth and accuracy of the statements therein contained.

9.3 All persons dealing with the Trustees are released from inquiry into the decision or authority of the Trustees and to the application of any monies, securities, or other property paid or delivered to the Trustee.

10. 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 him or exercises of discretion granted to him 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 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, CLC Foundation and Advocates for the Disabled, shall be charged generally against the trust property and may 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 Joinder 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 on behalf of a Designated Beneficiary for the costs of services and benefits provided directly or indirectly by CLC or an affiliated enterprise and (b) the Trust shall retain those funds remaining in the Trust at the time of death of the Designated Beneficiary. The Sponsors executing the Joinder Agreements are aware of the potential conflicts of interest that exist in the Trustees' administration of the Trust. Any Sponsor executing a Joinder 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 or with any related entities or a Designated Beneficiary.

14. POWER TO AMEND TRUST

The terms of the Trust Agreement may be amended by CLC and shall become effective immediately upon approval by the Board 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, CLC 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 Joinder Agreements. CLC 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, State of New York, which is the location of an office of CLC and where the CLC's 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.

