

ESAAL LICENSE AGREEMENT

This agreement ("Agreement") is effective this ___ day of _____ 2011 ("Effective Date"), between Empire State Association of Assisted Living ("ESAAL" or "Licensor"), having an address at 646 Plank Road, Suite 207, Clifton Park, NY 12065 and its member _____ ("Member" or "Licensee"), having an address at _____.

ESAAL and Member hereto agree as follows:

PREMISES:

WHEREAS, ESAAL is the owner of a certain New York State Service Mark # S21396, identified more fully in Exhibit A, which consists of certain artwork familiarly known as the "ESAAL Logo" (hereinafter referred to as the "Logo") and Name; and

WHEREAS, Member desires to use such Logo and Name under the terms herein set forth.

NOW, THEREFORE in consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

1. GRANT OF LICENSE

1.1 ESAAL hereby grants to Member a non-exclusive, non-transferable right and license to use the Logo and Name for the following purposes only, while reserving to ESAAL all other rights of every kind and nature pertaining to the Logo and Name:

- (a) Use of Logo and/or Name on the Member's official website to indicate that it is a member of ESAAL, provided however that if the Member operates one or more out of state or unlicensed facilities, the Logo and/or Name may only be used on the main website and on the pages pertaining to New York State licensed adult care facilities.
- (b) Use of Logo and/or Name on the Member Community's marketing material, such as brochures and advertisements, indicating it is a member of ESAAL, provided however that for Members that operate out of state or unlicensed entities, the Logo and/or Name may only be used on marketing materials that are general in nature or pertain specifically to one or more New York State licensed adult care facilities.
- (c) Use of Name in a radio advertisement which states "Proud Member of ESAAL", subject to the prior approval by the ESAAL Public Relations Committee of the content of said radio advertisement.

1.2 The Logo and Name shall be used only in connection with materials promoting the Member's licensed facilities, and may not be used in any legislative or lobbying advertisements or materials without prior written approval of ESAAL.

1.3 The Logo must be reproduced in high quality on all print marketing materials and on a web-based webpage or advertisement only in the form of an unaltered graphic distributed by ESAAL.

1.4 Prior to any use of the Logo or Name other than those specified in 1.1, Member shall submit to ESAAL, at no cost to ESAAL and for ESAAL's approval, samples of all websites and materials for which it intends to use the Logo or Name. Requests for prior approval shall be addressed to ESAAL at the address above, or the member should contact ESAAL staff at (518) 371-2573 to arrange for electronic submission. ESAAL reserves the right to disapprove any sample for any reason. Once such samples have been approved by ESAAL, Member shall not materially depart therefrom without ESAAL's prior express written consent.

2. LICENSE FEE

For and in consideration of the mutual covenants, conditions, and promises contained herein, and for other good and valuable consideration already received, ESAAL grants the license contained herein.

3. TERM AND TERMINATION

3.1. The term of this Agreement will commence on the date hereof and shall expire, unless earlier terminated in accordance with the provisions of this Agreement, on January 1st following its execution ("Initial Term"). Thereafter, the term will renew automatically for a one year period ("Renewal Term") provided ESSAL membership fees are paid in accordance with the ESSAL Membership Agreement and the Member is in good standing at the expiration of the Initial Term or Renewal Term.

3.2 ESAAL shall have the right to immediately terminate this Agreement, including termination of all rights granted hereunder if Member, or any of its managers, officers, members, employees, affiliates, advisors, successors and/or assigns:

- a) Fail to perform any material obligation required by this license;
- b) Fail to be a Member in good standing of ESAAL;
- c) Modify the ESSAL Logo or Name without the express written authorization of ESAAL;
- d) Use either the ESAAL Logo or Name in a manner not authorized under this agreement; or
- e) For any other reason not expressly included in this Agreement ESAAL determines that the use of either the ESAAL Logo or Name would negatively affect ESAAL.

For the purposes of this Agreement, a Member in good standing of ESAAL is a current member who has paid all membership fees and, if a Provider Member as defined in ESAAL's

bylaws, whose adult care facilities' operating certificate(s) have not been revoked, suspended or limited. If this Agreement is terminated, both parties shall be released from all obligations and duties imposed or assumed hereunder to the extent so terminated, except as expressly provided to the contrary in this Agreement

4. LIABILITY AND INDEMNIFICATION

4.1 THE CUMULATIVE LIABILITY OF ESAAL FOR ALL CLAIMS RELATING TO THE LOGO, IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL LICENSE FEES PAID TO ESAAL HEREUNDER. IN NO EVENT SHALL ESAAL BE LIABLE TO THE MEMBER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. Member shall at all times during the term of this Agreement and thereafter indemnify, defend, and hold ESAAL, its trustees, directors, officers, employees and affiliates harmless from and against any and all claims, proceedings, demands and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys fees, which arise out of or relate in any manner whatsoever to Member's use of the Logo or Name.

5. GENERAL PROVISIONS

5.1 Governing Law: This Agreement shall be governed by, construed and enforced in accordance with the laws of New York State and any action brought regarding or arising out of this Agreement shall be in Federal Court, Northern District of New York (Albany), or New York State Supreme Court, Saratoga County.

5.2 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party. Nothing contained in this Agreement shall require or permit Licensor or Licensee to do any act inconsistent with the requirements of any United States law, regulation or executive order as the same may be in effect from time to time.

5.3 Member shall not represent, either directly or by implication that ESAAL endorses or guarantees the goods or services Member provides.

5.4 Neither party, absent written approval of the other, shall assign any rights under this Agreement to any third party.

5.5 This Agreement shall be binding upon and inure to the benefit of ESAAL and Member and their respective successors and assigns.

This Agreement, with respect to the subject matter hereof, (i) contains the entire understanding between, ESAAL and Member, (ii) supersedes all prior agreements with respect to the subject matter, and (iii), may only be amended by another writing signed by both ESAAL and Member.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

EMPIRE STATE ASSOCIATION OF ASSISTED LIVING

By: _____
Lisa Newcomb, Executive Director

Date: _____

Member Name

By: _____

Print Name: _____

Date: _____

EXHIBIT A

New York State Service Mark # S21396

The ESAAL Logo consists of an unfinished triangle with the left line segments made up of three solid blue lines and the right segments three solid grey lines. The bottom line segment is a solid grey line, the widest section of which is on the left side. Contained in the middle of the unfinished triage is the word “esaal” in lower-case print. In addition, the second lower-case “a” is filled in yellow. See below:

