

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2021-015089-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

In Re: Champlain Towers South Collapse Litigation

Plaintiff(s)

vs.

N/A

Defendant(s)

_____ /

**ORDER GRANTING JOINT MOTION FOR ENTRY OF ORDER APPROVING FORM
ESCROW AGREEMENT FOR PAYMENTS OF SETTLEMENT PAYMENTS INTO
ESCROW ACCOUNT IN ACCORDANCE WITH SETTLEMENT AGREEMENT
ARTICLE 4**

THIS CAUSE came before the Court on June ____, 2022, on the *Joint Motion for Entry of Order Approving Form Escrow Agreement for Payments of Settlement Payments into Escrow Account in Accordance with Settlement Agreement Article 4* (“Motion”). The Court, having considered the Motion, being advised that the Parties have requested that the Court approve the Escrow Agreement authorizing the deposit of Settlement Payments into the Escrow Account, and being otherwise fully advised in the premises, ORDERS AND ADJUDGES as follows:

1. The Motion is GRANTED.
2. The form of the Escrow Agreement attached to this Order is approved.
3. All capitalized terms in this Order shall have the same meaning as in the Settlement Agreement and Escrow Agreement, unless noted otherwise.
4. The Receiver is authorized to execute each such Escrow Agreement and serve as “Escrow Agent,” as defined in the form Escrow Agreement, in accordance with the “In Re: Champlain Towers South Collapse Litigation Class Action Settlement Agreement” preliminarily

approved by the Court on May 28, 2022 (the “Settlement Agreement”).

5. The Escrow Agent shall hold the Escrow Funds in the Escrow Account and shall release the Escrow Funds only upon a Court order directing: (i) payment of the Escrow Funds into the Settlement Fund Account no later than thirty (30) days after the Effective Date, but not prior to the Effective Date; or (ii) the return of the Escrow Funds to the Depositor.
6. The Receiver is acting as Escrow Agent under the Escrow Agreement solely in his capacity as Receiver and at the request of the Parties and Michael Goldberg shall not in any way be individually liable under the Escrow Agreement unless he intentionally diverts or otherwise wrongfully uses Escrow Funds for his personal use. Moreover, the Receiver’s law firm, Akerman LLP, is not serving as Escrow Agent or in any way involved in the Escrow Agreement and shall not be liable in any way in connection with the Escrow Agreement.
7. The Escrow Funds shall be deposited or otherwise kept in the J.P. Morgan Chase Bank, N.A., 100% U.S. Treasury Securities Money Market Fund (CJTXX) (the “J.P. Morgan Fund”) as the Escrow Account to hold the Escrow Payments, pending further order of the Court.
8. Once an Escrow Payment is deposited in the Escrow Account, the Settlement Class shall bear any risk of any reduction in the J.P. Morgan Fund to the extent the Settlement Class is ultimately entitled to the Escrow Funds and in no event shall a Depositor or a Settling Party ever be responsible for replacing any Escrow Payment, in whole or in part, not available to be paid to the Settlement Fund.
9. If a Settling Party withdraws from the Settlement and cancels and terminates its obligations under the Settlement Agreement, the Escrow Agent shall disburse the Escrow Funds in a manner that is consistent with the terms of the Settlement Agreement and as directed by the Court upon appropriate motion. If the Settlement Agreement is silent as to how a Settlement Payment shall be disbursed in the event of a termination by a particular Settling Party, the Escrow Agent shall promptly seek a Court order providing detailed direction as to how the

Escrow Funds shall be disbursed. All Parties will be served with the Escrow Agent's motion seeking direction as to how the Escrow Funds shall be disbursed and be given notice of any hearing.

10. A Depositor's payment of an Escrow Payment into the Escrow Account satisfies the Depositor's obligation to pay under the Policy and satisfies the obligation under the Settlement Agreement of the Depositor and its insured Settling Party(ies) to have this payment made.
11. Upon a Depositor's payment of an Escrow Payment into the Escrow Account, the applicable limits of the Policy under which the Escrow Payment is made are reduced in the amount of the Escrow Payment, unless and until the Escrow Payment is returned to the Depositor.
12. If all or part of the Escrow Payment is returned to the Depositor, the applicable limits of the Policy will be reinstated up to the amount of the Escrow Payment that is returned.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 16th day of June, 2022.



2021-015089-CA-01 06-16-2022 7:11 PM

Hon. Michael Hanzman

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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Physically Served:

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the “Escrow Agreement”) is made and entered into as of June ____, 2022, by and between _____ (the “Depositor”), and MICHAEL I. GOLDBERG, SOLELY IN HIS CURRENT CAPACITY AS RECEIVER OF CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC. (the “Escrow Agent”), appointed as Receiver in the action styled *In Re: Champlain Towers South Collapse Litigation*, Case No. 2021-15089 CA 01 (11th Jud. Cir., Miami-Dade County, Fla.) (the “Litigation”).

RECITALS:

WHEREAS, pursuant to that certain In Re: Champlain Towers South Collapse Litigation Class Action Settlement Agreement preliminarily approved by the Court on May 28, 2022 (the “Settlement Agreement”), the Depositor, which issued [insert appropriate policy identifying information] (the “Policy”), agreed to pay the amount of \$ _____ (the “Escrow Payment”); and

WHEREAS, the Parties have requested that Depositor deposit the Escrow Payment in the Court-approved Escrow Account, as defined below, in compliance with the Settlement Agreement, subject to the terms and conditions set forth below; and

WHEREAS, the Escrow Agent has agreed to hold the Escrow Payment and any interest and other earnings thereon in the Escrow Account pursuant to this Escrow Agreement; and

WHEREAS, this Escrow Agreement contemplates and is conditioned upon the Court’s entry of an Escrow Order approving the form of this Escrow Agreement, which order, *inter alia*, will recognize that the Depositor’s payment of the Escrow Payment into the Escrow Account satisfies the Depositor’s obligation to pay under the Policy and satisfies the obligation under the Settlement Agreement of the Depositor and its insured Settling Party(ies) to have this payment made; and

WHEREAS, this Escrow Agreement further contemplates and is conditioned upon the Court’s entry of an Escrow Order recognizing that: (a) upon the Depositor’s payment of the Escrow Payment into the Escrow Account, the applicable limits of the Policy under which the Escrow Payment is made are reduced in the amount of the Escrow Payment, unless and until the Escrow Payment is returned to the Depositor; and (b) if all or part of the Escrow Payment is returned to the Depositor, the applicable limits of the Policy will be reinstated up to the amount of the Escrow Payment that is returned; and

WHEREAS, the Parties have agreed to the J.P. Morgan Chase Bank, N.A., 100% U.S. Treasury Securities Money Market Fund (CJTXX) (the “J.P. Morgan Fund”) as the “Escrow Account” to hold the Escrow Payment pending further order of the Court; and

WHEREAS, this Escrow Agreement shall not become effective until entry of the Escrow Order approving the form of this Escrow Agreement.

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

1. **Incorporation of Recitals.** The above Recitals are true and correct and are incorporated herein as if set forth in full.
2. **Defined Terms.** All capitalized terms in this Escrow Agreement shall have the same meaning as in the Settlement Agreement, except as otherwise noted.

3. Escrow Funds. No later than forty-five (45) days after the later of (a) the date of the Escrow Order, and (b) the date that each Settling Party receives a current, executed W-9 and valid wire instructions, with a corresponding SWIFT/BIC code, from the Escrow Agent for the Escrow Account, the Depositor shall deliver to the Escrow Agent, to hold in escrow pursuant to the terms hereof and pursuant to Article 4 of the Settlement Agreement, the full Escrow Payment (the Escrow Payment together with any interest and other earnings thereon, shall be referred to herein as the “Escrow Funds”). If the Escrow Payment is paid by check, the Escrow Agent will deposit the Escrow Payment received from the Depositor into the Escrow Account within one (1) business day after receipt.

4. Deposit of Escrow Funds. The Escrow Agent shall deposit the Escrow Funds in the J.P. Morgan Fund and the Escrow Funds shall remain in the J.P. Morgan Fund until further order of the Court.

5. Costs of Escrow Agent. The Depositor shall not be responsible for paying any cost, expense, or attorneys’ fees incurred with respect to the Escrow Funds (including, but not limited to, any costs or fees charged by the institution holding the Escrow Funds) or by the Escrow Agent with respect to this Escrow Agreement, and any such costs, expenses, or attorneys’ fees shall not be paid with, or deducted from, the Escrow Payment.

6. Taxes on Escrow Funds. The Escrow Agent shall be responsible for determining the amount of and paying any taxes on earnings on the Escrow Payment (“Earnings Taxes”) that are due to be paid while the Escrow Funds are in the Escrow Account. The Escrow Agent shall pay Earnings Taxes from the earnings only, not the Escrow Payment. If Escrow Funds are returned to the Depositor before Earnings Taxes on such Escrow Funds are due to be paid, the Depositor is responsible for paying such Earnings Taxes. If Escrow Funds are located in the Settlement Fund Account at the time Earnings Taxes on such Escrow Funds are due to be paid, then the Settlement Administrator is responsible for paying Earnings Taxes on such Escrow Funds.

7. Release of Escrow Funds from the Escrow Account.

a. The Escrow Agent shall hold the Escrow Funds in the Escrow Account and shall release the Escrow Funds only upon a Court order directing: (i) payment of the Escrow Funds into the Settlement Fund Account no later than thirty (30) days after the Effective Date, but not prior to the Effective Date; or (ii) the return of the Escrow Funds to the Depositor.

b. If a Settling Party withdraws from the Settlement and cancels and terminates its obligations under the Settlement Agreement, the Escrow Agent shall disburse the Escrow Funds in a manner that is consistent with the terms of the Settlement Agreement and as directed by a Court order upon appropriate motion. If the Settlement Agreement is silent as to how a Settlement Payment shall be disbursed in the event of a termination by a particular Settling Party, the Escrow Agent shall promptly seek a Court order providing detailed direction as to how the Escrow Funds shall be disbursed. All Parties for which counsel have entered an appearance in the Litigation will be served via the Court’s electronic notice (“eservice@myfloridacourtaccess.com”) system with the Escrow Agent’s motion seeking direction as to how the Escrow Funds shall be disbursed and be given notice of any hearing.

c. If the Court orders any Escrow Funds to be returned to the Depositor from the Escrow Account, such Escrow Funds will be returned to the Depositor as provided in the Court order authorizing the return of the funds.

8. Representations and Warranties of Escrow Agent. The Escrow Agent represents and warrants that:

a. this Escrow Agreement has been entered into by the Escrow Agent and is the valid and binding agreement of the Escrow Agent enforceable against the Escrow Agent in accordance with its terms; and

b. the Escrow Agent, pursuant to the Escrow Order, has full power and authority to enter into this Escrow Agreement and to perform the Escrow Agent's duties and responsibilities under this Escrow Agreement; and

c. this Escrow Agreement does not and will not violate or breach any order, judgment, or ruling, or any contract, that is binding on the Escrow Agent or to which the Escrow Agent is subject; and

d. no litigation or other proceeding is pending or, to the Escrow Agent's knowledge, threatened that prohibits or restricts, or could prohibit or restrict, the entry into this Escrow Agreement by the Escrow Agent or the performance of the Escrow Agent's duties and responsibilities under this Escrow Agreement; and

e. the entry into this Escrow Agreement by the Escrow Agent does not and will not violate any law, regulation, or rule that is binding on the Escrow Agent or to which the Escrow Agent is subject.

9. Escrow Agent

a. Except as provided herein, the Escrow Agent assumes all liability and responsibility for any loss of funds which may result from the failure, insolvency, or suspension of J.P. Morgan Chase Bank, N.A. or the theft or loss of the Escrow Funds for any reason whatsoever after the Escrow Payment is made and while the Escrow Funds are on deposit in the Escrow Account or otherwise in the possession of the Escrow Agent.

b. The Escrow Agent shall, upon written request of the Depositor, provide statements in respect of the Escrow Account identifying the transactions, transfers, or holdings of the Escrow Funds.

10. Indemnity. The Escrow Agent, solely in his capacity as Receiver of the CTSCA and not in any other capacity, shall defend, indemnify, and hold harmless the Depositor and the Depositor's insured(s) on whose behalf the Escrow Payment is made (collectively, "Indemnified Persons") from, against, and in respect of any and all losses, damages, liabilities, deficiencies, judgments, interest, awards, penalties, fines, costs, and expenses of whatever kind, including, without limitation, reasonable attorneys' fees and costs, which any Indemnified Person may suffer, incur, sustain, or become subject to, arising out of or in connection with:

a. any breach of, or inaccuracy in, any representation or warranty made by the Escrow Agent in this Escrow Agreement; or

b. any breach or violation of, or any failure to perform, any covenant or agreement of the Escrow Agent in this Escrow Agreement; or

c. the negligence, intentional misconduct or lack of good faith of the Escrow Agent with respect to this Escrow Agreement or the performance of the Escrow Agent's duties and obligations under this Escrow Agreement; or

d. any loss of Escrow Funds which may result from the failure, insolvency, or suspension of J.P. Morgan Chase Bank, N.A. for any reason whatsoever; or

e. any loss of funds which may result from the theft or loss of the Escrow Funds for any reason whatsoever.

The provisions of this Section 10 shall apply whether the claim for defense or indemnification under this Section 10 results from a third-party claim or is a direct claim.

11. Notices. Any notice or communication to be given in regard to this Escrow Agreement must be in writing and must be hand-delivered, mailed, postage prepaid, by certified mail, return receipt requested, or sent via overnight courier service to the party to whom notice is given at the address for such party at the following addresses:

If to the Escrow Agent: Michael Goldberg
Christopher Carver
Akerman LLP
201 East Las Olas Boulevard
Suite 1800
Fort Lauderdale, FL 33301
michael.goldberg@akerman.com
christopher.carver@akerman.com

If to the Depositor: **XXXXXXXX**

Any such notice shall be deemed given when received or refused by the other party. A party may change its address for notices by giving the other party not less than five (5) days' advance written notice of the change in the manner provided above.

12. Escrow Agent Capacity. The Depositor agrees that the Escrow Agent is solely acting in his capacity as Receiver of the CTSCA in connection with this Escrow Agreement and that his law firm, Akerman LLP, shall not be liable for any act or omission by the Escrow Agent or in any other way in connection with this Escrow Agreement.

13. Court Approval. This Escrow Agreement is subject to Court approval and shall become binding and in full force and effect upon the issuance of the Escrow Order by the Court approving this Escrow Agreement.

14. Binding Agreement and No Assignment. This Escrow Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors, representatives, heirs and assigns; provided, however, that the Escrow Agent shall not assign or delegate any of its rights or obligations hereunder without the prior written consent of the Depositor.

15. Complete Agreement; Modification. This Escrow Agreement and the Settlement Agreement constitute the entire understanding and agreement between the parties to this Escrow Agreement concerning this Escrow Agreement and supersede all prior agreements and understandings regarding the Escrow Agreement. No modification of this Escrow Agreement shall be effective unless in writing and signed by all parties hereto and approved by the Court through an order.

16. Severability. In the event any provision of this Escrow Agreement is found under the applicable law to be invalid or unenforceable in any respect, that provision shall be construed by modifying

or limiting it so as to be valid and enforceable to the maximum extent compatible with and possible under applicable law, and to otherwise give effect to the intent of the parties.

17. Headings. The headings contained in this Escrow Agreement are for convenience purposes only and shall not in any way affect the meaning or interpretation hereof.

18. Construction. The parties have jointly participated in the negotiation and drafting of this Escrow Agreement and in the event of an ambiguity or question of intent or interpretation arises, this Escrow Agreement shall be construed as if drafted jointly and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Escrow Agreement.

19. Time of Essence. Time is of the essence in the performance of any party's obligations set forth in this Escrow Agreement.

20. Resignation or Removal of Escrow Agent. The Escrow Agent shall give at least seven (7) business days' notice to the Depositor in the event the Escrow Agent seeks to resign. The Escrow Agent may not resign or be replaced without a Court order. In the case of the resignation or removal of the Escrow Agent, the Escrow Agent shall fully cooperate with the successor escrow agent as appointed by the Court, including, without limitation, the transfer of the name of and title to the Escrow Account into the name of the successor escrow agent. If the Escrow Agent is unable to perform his duties, either party to this Escrow Agreement may move the Court to appoint a successor escrow agent. Prior to becoming the successor escrow agent, such person shall execute and deliver to the Depositor and the Court a copy of this Escrow Agreement agreeing to be bound by the terms of this Escrow Agreement.

21. Termination. This Escrow Agreement and the Escrow Account will terminate only upon the disbursement of the Escrow Funds from the Escrow Account in accordance with the terms of this Escrow Agreement and the Settlement Agreement. A termination of this Escrow Agreement and the Escrow Account shall not terminate or otherwise affect any claims that the Depositor may have against the Escrow Agent under this Escrow Agreement.

22. Counterparts. This Escrow Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement. This Escrow Agreement may be executed by facsimile, e-mail, or other electronic signature which shall, for all purposes, serve as an original executed counterpart of this Escrow Agreement.

(signatures on next page)

IN WITNESS WHEREOF, the undersigned have executed this Escrow Agreement as of the day and year first above written.

DEPOSITOR:

_____,
a _____

By: _____
Name: _____
Title: _____

ESCROW AGENT:

MICHAEL I. GOLDBERG, SOLELY IN HIS
CURRENT CAPACITY AS COURT APPOINTED
RECEIVER OF CHAMPLAIN TOWERS SOUTH
CONDOMINIUM ASSOCIATION, INC.

MICHAEL I. GOLDBERG, AS RECEIVER