

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR**

ACTION REFERRAL

TO <i>Singleton</i>	DATE <i>1-11-08</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000352</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>Cleared 2/1/08 letter attached.</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>1-23-08</i>
	<input type="checkbox"/> FOIA DATE DUE _____
	<input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			



KenCrestCenters

Collaborative Support Services

502 W. Germantown Pike, Suite 200
Plymouth Meeting, PA 19462
610-825-9360 Fax 610-825-4127

January 8, 2008

Mr. Robert Kerr, Director
Department of Health & Human Services

P. O. Box 8206
1801 Main Street
Columbia, SC 29202-8206

RECEIVED

JAN 11 2008

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Dear Mr. Kerr,

I am writing on behalf of the Secured Pooled Trust which was organized to comply with the requirements of 42 U.S.C. 1396p(d)(4)(c) to receive, hold and administer trust deposits on behalf of persons with disabilities. The nonprofit organization that has established and maintains this Trust is KenCrest Centers, a federally tax-exempt Pennsylvania nonprofit corporation headquartered at 502 West Germantown Pike, Plymouth Meeting, PA 19462.

My purpose in writing to you not only is to introduce you to the Trust, but to inquire whether there are any requirements which must be complied with, either in your agency or otherwise under the laws or regulations of your State in order to lawfully offer the availability of establishing shares in the Trust to citizens of South Carolina.

I have enclosed a copy of the Trust Agreement as it is presently constituted, in the event it is necessary for you to review it. It would be greatly appreciated if you could confirm that this Trust is acceptable under your laws and procedures and permissible to be offered to citizens of your State or specifically inform us of any further requirements that must be complied with in order to do so. Alternatively, if there are no requirements that must be satisfied in order to lawfully offer the availability of our Trust to citizens of your State, it would be greatly appreciated if you could confirm this in writing as well. If additional procedures are required, kindly direct us to the appropriate person through whom we can best facilitate the completion of these procedures.

Thank you for your time in considering this request, we look forward to working with you and want to be sure that we are in compliance with any laws or regulations pertaining to our Trust within your State.

Sincerely,


Denise DiGinto
Trustee

Securet – Pooled Special Needs Trust

WHEREAS, people with disabilities enjoy a healthier, more stable, productive and meaningful lifestyle when there is support from their families, relatives and communities; and

WHEREAS, it is less stressful for family members and caregivers if resources for the disabled individual's life plan are in place prior to the incapacity or death of parents, relatives or caregivers.

WHEREAS, the current laws and requirements of State and Federal laws allow people with disabilities, certain relatives, guardians, and courts to place assets in trust under specific requirements without subjecting those assets to spend-down or recapture rules.

WHEREAS, KenCrest Centers, a Pennsylvania non-profit corporation, have established a Pooled Special Needs Trust entitled Securet intending to conform to the requirements of 42 U.S.C. 1396p(d)(4)(c) as the same may be amended from time to time, and applicable state rules or statutes which create an exception to the treatment of trust assets of disabled persons. This Trust Agreement will enable Securet to establish and manage a pooled special needs trust that will meet the needs of the individual with a disability.

ARTICLE ONE

DEFINITIONS

The Trust Board. This term refers to the Board of Directors of the pooled special needs trust known as Securet and shall be comprised of not less than three (3) members, nor more than five (5) members in the discretion of CEO of KenCrest Centers. The CEO of KenCrest Centers, or his/her duly authorized representative shall be a standing member the Trust Board and the remaining members shall be appointed by the CEO of KenCrest Centers. Vacancies in the Trust Board shall be filled by the CEO of KenCrest Centers.

Beneficiary. This term is intended to mean a person who is disabled as defined by 42 U.S.C. Sect.1382 c(a)(3), as such regulations may be amended from time to time, who has deposited funds to this trust or for whom a deposit to this trust has been made, for the purpose of establishing a Beneficiary Trust Share as herein below defined.

Beneficiary Trust Share. This term is intended to mean the distinct share or portion of this trust held on deposit for an individual Beneficiary. Funds on deposit in a Beneficiary Trust Share may be the funds of the Beneficiary deposited by, or on behalf of the Beneficiary, or could be funds of a third party deposited to this trust for the benefit of the Beneficiary.

Extra and Supplemental Needs. This term means those items, products or services not covered by the medical assistance program, insurance or other third-party liability source for which a beneficiary of a special needs trust or his parents are personally liable and that can be provided to the beneficiary to increase the beneficiary's quality of life and to assist in and are related to the treatment of the beneficiary's disability. The term may include medical expenses, dental expenses, nursing and custodial care, psychiatric/psychological services, recreational therapy, occupational therapy, physical therapy, vocational therapy, durable medical needs, prosthetic devices, special rehabilitative services or equipment, disability-related training, education, transportation and travel expenses, dietary needs and supplements, related insurance and other goods and services.

Grantor. This term is intended to mean a Beneficiary, guardian of a Beneficiary, parent or grandparent of a Beneficiary or a court of competent jurisdiction, or any other person permitted by law, to establish or add to a Beneficiary Trust Share.

Grantor Adoption Agreement. This term is intended to mean the document that is executed by the Grantor and agreed to by the Trustee.

Governmental Benefits: This term is intended to mean financial payments, governmental program funding, direct services or medical care or treatment from all available public resources, including (but not limited to) the Supplemental Security Income Program (SSI), any state equivalent Supplemental Income Program (SIP), other resources provided through state agencies in the state in which the Beneficiary is residing, the Old Age Survivors and Disability Income Program (OASDI), the Medicaid Program and any other similar additional or successor programs.

Guardian: Includes any court-appointed legal representative of the estate or person of a living Beneficiary.

Trust Agreement: This term is intended to mean the documents that are used to establish the pooled special needs trust with this non-profit agency.

ARTICLE TWO

ESTABLISHMENT AND PURPOSE OF TRUST AGREEMENT

2.1 KenCrest hereby establishes the Trust Agreement in accordance with the following terms and conditions.

2.2 The purpose of this trust is to establish a repository in compliance with applicable law in which the funds of persons with disabilities (Beneficiaries) may be received in trust, to be held for the Beneficiary's Extra and Supplemental Needs as defined herein and in the Grantor Adoption Agreement, also defined herein, without such funds being considered resources which would disqualify the Beneficiary from receiving certain governmental benefits the Beneficiary would be entitled to receive.

2.3 This trust is intended to allow multiple Beneficiaries or the parents or grandparents or guardians of Beneficiaries, via a Non-Profit entity, to establish distinct trust deposits ("Beneficiary Trust Shares") which shall benefit from combined investment and administration, but which shall

nevertheless each be deemed the distinct share of, or for the benefit of, their respective Beneficiaries.

2.4 To the extent required by law, this trust shall be submitted to the appropriate government authorities.

ARTICLE THREE

TRUSTEE

3. KenCrest Centers, a non-profit entity has established the trust in accordance with the requirements of 42 U.S.C. 1396p(d)(4)(c) and shall serve as the Trustee. The CEO of KenCrest Centers shall appoint employees of KenCrest Centers to serve as Trust Administrators. The Trust Administrators shall serve at the direction of the CEO and under the overall guidance of the Trust Board, and may be removed and replaced by the CEO in his/her reasonable discretion. The CEO shall appoint such number of Trust Administrators as he/she feels appropriate to reasonably handle the duties of the trust. The day to day affairs of the Trust shall be administered by the Trust Administrators, who shall be authorized to accept new trust shares and generally administer the deposits and disbursements of Beneficiary funds, the selection of investments for trust assets, the filing of reports required of the trust, the preparation and filing of tax returns as required for the trust and the administration of the funds remaining in shares of Beneficiaries who die, as required by the Trust Agreement and applicable law. Vacancies in the office of Trust Administrator shall be filled by the CEO of KenCrest Centers. The Trustee shall have all the powers given under this Agreement under applicable law, including without limitation the power to delegate to a corporate fiduciary the exercise of any powers, with the same effect as if the trustee delegating such power had joined in the exercise of such power, and to revoke any such power, provided, however, that the revocation of any such delegation shall be in writing delivered to and accepted by the corporate fiduciary.

ARTICLE FOUR

IRREVOCABLE TRUST

4. This trust shall be irrevocable and no Grantor or Trustee hereinafter shall have any rights to alter, amend or revoke this trust in any way other than as specified in Sub-section 19.2 herein below.

ARTICLE FIVE
ESTABLISHMENT, ADMINISTRATION AND DISPOSITION
OF BENEFICIARY TRUST SHARES

5.1 A Beneficiary Trust Share may be established by a Grantor completing a Grantor Adoption Agreement and making a deposit of funds with the Trustee to establish or to add to the Beneficiary Trust Share in question.

5.2 Principal and income of a Beneficiary Trust Share shall be held by the trustee to be used during a Beneficiary's lifetime solely for the Beneficiary's Extra and Supplemental Needs. In this regard, this trust is specifically not intended to provide basic support and maintenance needs for any Beneficiary. Similarly, this trust has not been created to supplant or replace Government Benefits of any kind. Trustee shall deny any request made by any agency or governmental entity requesting disbursement of trust funds to satisfy a Beneficiary's support needs. A Beneficiary shall have no entitlement to the income or corpus of his or her Beneficiary Trust Share, except as the Trustee in his/her complete and absolute discretion determines to pay or disburse to or for the benefit of Beneficiary or as otherwise specifically authorized hereunder.

5.3 Trustee shall have the right in its sole discretion to bring an action in any court having jurisdiction over the matter, to secure a ruling or order that this trust is not available to a Beneficiary for support purposes. Any expenses of the Trustee, including reasonable attorney fees, in connection with matters relating to determination of eligibility of a Beneficiary for Governmental Benefits, shall be a proper charge to the Beneficiary Trust Share of the Beneficiary in question. A proportionate share of said expenses shall be made when and if more than one Beneficiary is being represented.

5.4 All deposits made to establish or to add to Beneficiary Trust Shares are understood and agreed to be irrevocable and non-refundable.

5.5 If approved by the Trustee, the Beneficiary, Guardian of a Beneficiary, parent or grandparent of a Beneficiary or any court of competent jurisdiction may make or order an additional deposit to a Beneficiary Trust Share then validly in existence under the Trust and thereafter, such deposit shall be held as part of the Beneficiary Trust Share in question, subject to all the terms and conditions of this Trust Agreement.

ARTICLE SIX

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ARTICLE SEVEN

FEES

7. There are certain fees relating to the initial establishment of the trust as well as the on going operation of the Trust that are listed particularly in Appendix One.

7.1 The Board, annually, will review all fees to determine if they are still reasonable and equitable to the performance of this Trust Agreement. Any fee changes must be approved by a majority of the Board. Any new fees will take place on January 1, following the approval of the Board. The fees will be published annually for the following calendar year.

ARTICLE EIGHT

COSTS AND EXPENSES/ ALLOCATION OF INCOME/ PAYMENT OF INCOME TAXES

8.1 Costs and Expenses. The administrative costs for the creation of the Trust and the Beneficiary Trust Share will be paid when incurred. The fee for general administrative cost shall be charged to each of the Beneficiary Trust Shares and payable monthly. The Financial Fee shall be charged to each of the Beneficiary Trust Shares and payable monthly. Legal fees incurred in connection with the operation of the Trust shall be the responsibility of the beneficiaries and shall be apportioned equitably among and paid from the then existing Beneficiary Trust Shares.

8.2 Taxes. Any taxes caused by the assets attributable to any respective Beneficiary Trust Share, including without limitation, state and federal income taxes, including capital gain, or inheritance or other death taxes, or other taxes, if any owed by the Beneficiary in question shall be paid from the respective Beneficiary Trust Share. Any cost attributable to the preparation of any tax returns shall be paid from the respective Beneficiary Trust Share.

ARTICLE NINE

ADMINISTRATIVE PROCEDURES

9.1 Investment: The Trustee will deposit all Beneficiary Trust Share or investment purposes with the financial institution chosen by said Trustee.

9.2 The Trustee shall at regular intervals review the performance of the deposits and/or investments. The Trustee will invest the assets according to a prudent investment strategy that maintains the safety of the principal.

9.3 Common Account: All assets held by the Financial Institution under this Trust Agreement may be combined for investment purposes.

9.4 Books and Records: The Trustee shall keep detailed records of all financial transactions for each Beneficiary Trust Share.

9.5 Trust Board: The Trust Board shall meet on the call of the CEO of KenCrest Centers to take up any issues required to be decided in the overall operation of the Trust or to provide guidance to the Trust administrators. The Trust Board shall meet at least once annually to review the operations of the Trust, review financial statements for the Trust and conduct such business as may come before the Board.

ARTICLE TEN

SPENDTHRIFT PROVISION

10.1 No income or principal shall be assignable by a Beneficiary or available to anyone having a claim against a Beneficiary before actual payment to the Beneficiary. No part of the trust shall be subject to the claims of the Beneficiary's voluntary or involuntary creditors for the provision of care and services to him during his lifetime, including payments for residential care and maintenance by any public entity or private creditor.

10.2 Under no circumstances can the Beneficiary compel a distribution from the trust for any purpose. Trustee's discretion in making non-support distributions is final, even if Trustee elects to make no distributions at all. Further, Trustee may be arbitrary and unreasonable. Trustee's absolute and independent judgment, rather than any other party's determination, is intended to be the criterion on which distributions are made. No court or any other person should substitute its or their judgment for the decision or decisions made by Trustee.

ARTICLE ELEVEN

A. DISPOSITION OF TRUST ASSETS UPON DEATH OF A BENEFICIARY

Upon the death of the Beneficiary, any amounts that remain in that Beneficiary's trust share shall be administered so as to conform with all of the requirements of 42 U.S.C.. Section 1396p and/or related statutes, including state statutes and regulations that are consistent with the provisions and purposes of the Omnibus Budget Reconciliation Act of 1993, amending 42 U.S.C.. Section 1396p(d) by creating exceptions to the general trust rules as provided in Subsection (d)(4)(C) and pertaining to reimbursement to the States for government assistance provided on behalf of any individual Beneficiary.

Such property should be distributed to each state in which the Beneficiary received government assistance, based on each state's proportionate share of the total government assistance paid by all of the states on the Beneficiary's behalf, and any amount not required to be paid to such state or states shall be retained by the trust. In the trustee's sole discretion as to the specific use, any amounts retained in the trust shall be used in accordance with the following provisions:

- a) For the direct or indirect benefit of other Beneficiaries;

- b) to provide disabled persons as defined in 42 U.S.C. Section 1382c(a)(3), with equipment, medication or services deemed suitable for such persons by the Trustee.

B. DISPOSITION OF TRUST ASSETS UPON THE TERMINATION OF THE TRUST

In the event there are funds remaining on termination of the pooled special needs trust, the Trustee shall consider the tax, Medical Assistance (Medicaid) effects and the effects on receipt of any other public benefits by the Beneficiary and then in the complete discretion of the Trustee either terminate the Beneficiary Trust share as though the Beneficiary had died and make disposition as noted above, or make such other disposition for the benefit of the Beneficiary as is determined in the Trustee's sole discretion to be in the reasonable best interest of the Beneficiary.

C. TRUSTEE TO TRUSTEE TRANSFER PROVISIONS

Subject to the Board's discretion as provided in Article Twelve below, if the Trustee has reasonable cause to believe that income or principal held in the Trust for the benefit of Beneficiaries under any Beneficiary Trust Share as provided in Article 5 above is or may become liable for basic maintenance, support, medical, dental, therapeutic and similar care, or any other appropriate care or service that would otherwise be provided to a Beneficiary by federal, state or local governmental agencies, or similar departments; or if the Trustee has reasonable cause to believe that any of the Trust's income or principal, whether held as part of a Beneficiary's Trust Share under Article 5 above, or otherwise, is or may be determined to be a resource by any pertinent governmental agency; or if the Trustee determines, in its sole discretion, that it cannot fulfill its fiduciary duties to a Beneficiary, the Board may, within its discretion, direct the Trustee to arrange to transfer such Beneficiary's Trust Share to:

- a) a comparable tax-exempt pooled trust organization serving jurisdiction in which the Beneficiary resides, and organized under Internal Revenue Code Section 501(c)(3); or
- b) establish a private special needs trust following the requirements of 42 U.S.C. Section 1396(p)(d)(4)(A) by assisting such Beneficiary to create or arrange to create through the hiring of competent counsel, a properly-drafted private special needs trust that complies with federal law, and complies with the local and state and laws in which such Beneficiary resides.

Nothing in this Section C. providing for a "trustee to trustee" transfer shall be construed as a transfer of assets or shall be construed to result in the application of the (state Medicaid) reimbursement clause as provided in Section A. of this Article Eleven, as such Section is intended to comply with the provisions of 42 U.S.C. Section 1396(p)(d)(4)(C)(iv), and as such provision may, from time to time be amended. Further, nothing in this Section C. shall be construed to result in the application of any similar or parallel state legislation and / or regulation. This provision does not create any rights in such Beneficiary to compel distributions such as to render this Trust or any Beneficiary's Trust Share revocable. To the extent that a Beneficiary's Trust Share is transferred to a successor Trustee, the Trustee under this Trust Agreement shall retain all of its fiduciary responsibilities until it has received written notice from the successor Trustee that the Beneficiary's Share has been accepted, and is being managed according to the terms of its governing

instrument, at which time the duties of the Trustee and the management of the Beneficiary's Trust Share shall terminate.

ARTICLE TWELVE

TERMINATION

If it becomes impossible or impracticable to meet the objectives of the Trust Agreement due to changes in current regulations, laws, judicial decisions or other unforeseen situations, then the Board may terminate this agreement and follow the termination procedures outlined in Article Eleven above.

With the termination of the Trust Agreement, the Trustee, in its sole and absolute discretion will distribute the trust assets held for any living Beneficiaries as provided in Section B. of Article Eleven above or upon direction from the Board, as provided in Section C of Article Eleven above; and in the case of funds held as a result of any deceased Beneficiaries of the Trust disposition shall be as provided in Section A. of Article Eleven above.

ARTICLE THIRTEEN

TAXES

- a. The Grantor acknowledges that contributions to the Trust are not deductible as charitable gifts, or otherwise.
- b. The Grantor, other than a Beneficiary, remains responsible for filing gift tax returns and paying gift taxes that may be required as a consequence of adding to a Beneficiary Trust Share.
- c. Beneficiary Trust Shares' income, whether in cash or valuable property, may be taxable to the Beneficiary subject to applicable exemptions and deductions.
- d. Beneficiary Trust Shares' income may be taxable to the Trust, and when this is the case, such taxes shall be allocated to the Beneficiary Trust Share according to the taxes that are due and charged against such Shares.

ARTICLE FOURTEEN

WAIVER OF BOND

No fiduciary serving hereunder shall be required to furnish bond in any jurisdiction, and if any bond is necessary, no surety shall be required.

ARTICLE FIFTEEN

INDEMNIFICATION

The Board of Directors and each of its members, the Trustee, their agents and employees shall be indemnified, defended and held harmless by the Trust for all claims of any nature arising

from the operation of the Trust and serving as Trustee for the Trust. The only exception to this right of indemnification shall be for willful neglect or intentional wrongdoing as finally determined by a court of competent jurisdiction.

ARTICLE SIXTEEN

POTENTIAL CONFLICTS OF INTEREST

The Grantor executing the Grantor Adoption Agreement is aware that the Trustee may also be representing an organization that has a residual interest in the Trust. To the extent the Trustee acting in his/her capacity is also an employee of KenCrest Centers it could be seen as being a potential conflict of interest. The Grantor waives such conflict in the establishment of the Beneficiary Trust share in this trust.

ARTICLE SEVENTEEN

AMENDMENT OF THE TRUST

19.1 The Board shall have the right and power to conform the Trust Agreement to the requirements of 42 U.S.C. 1396p(d)(4)(C), as amended from time to time, and to the rules and to the regulations approved by any governing body or agency relating to such acts and to state statutes and regulations that are consistent with the provisions and purposes of such acts.

19.2 Amendments may be offered to the Trust Board:

1. To clarify existing ambiguities,
2. For the effective and efficient administration of the Trust,
3. To conform to the purpose and intent of the Trust Agreement.

Amendments must be approved by a majority of the members of the Trust Board.

ACCEPTED AND ADOPTED AS THE:

Securét Pooled Special Needs Trust

KenCrest Centers

BY: _____

Witness

APPENDIX ONE.

EFFECTIVE July 1, 2007

INTEREST, DIVIDENDS, CAPITAL GAINS, EARNINGS

The trustee shall commingle all funds of Secured Pooled Special Needs Trust for the purpose of investment. Said investment shall be made using the services of a Commercial Bank and/or Trust Company duly registered and licensed to receive such investments. Said institution shall insure funds to the extent possible by law and shall provide "collateral security" in investment grade instruments commonly known as "triple AAA" such as Freddie Mac or Fannie Mae securities.

Interest income, dividends, capital gains or other earnings shall be issued to the Trustee and promptly distributed on a pro-rata basis to each Beneficiary Trust Share.

ESTABLISHMENT FEE:

Each Grantor under this trust will be charged an Establishment Fee of \$1,850. for preparing and reviewing the Grantor Adoption Agreement and establishing or adding to a Beneficiary Trust Share records that are necessary to set-up and establish the Trust. This fee is payable to the non-profit organization at the time of submission of the Grantor Adoption Agreement and deemed fully earned at that time.

ADMINISTRATION and SERVICE FEE:

- a. There shall be no direct charge levied for the distribution of funds from the Beneficiary Trust Share.
- b. There is a \$500 fee payable for the establishment of the Trust's information system, the recovery, privacy and archival requirements to track funds over the life of the Trust. This fee shall be withdrawn as part of the initial deposit of Beneficiary Trust Share. There is a \$25 annual fee for the maintenance of these systems levied at each annual anniversary of the initial Beneficiary Trust Share deposit. Only one such charge shall be levied per Beneficiary Trust Share per year regardless of the number of deposits that may be made to the Beneficiary Trust Share.
- c. A 1.25% annual fee will be charged to each Beneficiary Trust Share for the day-to-day administration of the Entity Trust. This charge will be levied monthly based upon the average balance of the Beneficiary Trust Share in the previous month and will be deducted from the Beneficiary Trust Share no later than thirty days following the close of that prior month.

Bag # 000352 ✓



State of South Carolina
Department of Health and Human Services

Mark Sanford
Governor

Emma Forkner
Director

February 1, 2008

Ms. Denise DiGinto
KenCrest Centers
502 W. Germantown Pike, Suite 200
Plymouth Meeting, Pennsylvania 19462

Re: Secured Pooled Trust

Dear Ms. DiGinto:

Your recent letter to Mr. Robert Kerr was referred to me. After reviewing the trust document you furnished to me, I find that it meets all federal requirements for a pooled trust. I know of no further requirements that you must meet to offer your services in South Carolina.

Please note that the South Carolina Department of Health and Human Services, by this letter, is endorsing neither your organization nor your product. There are several well-established pooled trusts operating in the State at present. Government or quasi-government entities operate most of these trusts but the Department expresses no opinion on the merits of these trusts other than to state that they meet the basic requirements for a pooled trust in accordance with State and federal law.

Please let us know when you anticipate beginning your activities in South Carolina.

Sincerely,

A handwritten signature in dark ink, appearing to read "George R. Burnett".

George R. Burnett
Assistant General Counsel

GRB/b
cc: Garnell Cauley

Office of General Counsel
P. O. Box 8206 Columbia South Carolina 29202-8206
(803) 898-2795 Fax (803) 255-8210