

REPORT ON EXAMINATION

OF

KENDAL AT ITHACA, INC.

AS OF

DECEMBER 31, 2012

DATE OF REPORT

DECEMBER 19, 2014

EXAMINER

KAIWEN K. GUO

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

December 19, 2014

Honorable Benjamin M. Lawsky
Superintendent of Financial Services
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law, and acting in accordance with the instructions contained in Appointment Number 31035, dated November 13, 2013, attached hereto, I have made an examination of Kendal at Ithaca, Inc., a not-for-profit continuing care retirement community certified pursuant to the provisions of Article 46 of the New York Public Health Law, as of December 31, 2012, and respectfully submit the following report thereon.

The examination was conducted at the home office of Kendal at Ithaca, Inc. located at 2230 North Triphammer Road, Ithaca, New York.

Wherever the designations the "Community" or "Kendal" appear herein, without qualification, they should be understood to indicate Kendal at Ithaca, Inc.

Wherever the designation the "Department" appears herein, without qualification, it should be understood to indicate the New York State Department of Financial Services.

1. SCOPE OF THE EXAMINATION

The previous examination was conducted as of December 31, 2009. This examination covered the three-year period from January 1, 2010 through December 31, 2012. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

Representatives of the New York State Department of Financial Services and the New York State Department of Health conducted a site survey of the Community's facility on October 29, 2013, pursuant to the requirements of Section 4614(1) of the New York Public Health Law.

The examination comprised a verification of the assets and liabilities of the Community as of December 31, 2012, in accordance with generally accepted accounting principles ("GAAP"), as modified by the Department pursuant to Insurance Regulation No. 140 (11 NYCRR 350), a review of income and disbursements deemed necessary to accomplish such verification, and utilized, to the extent considered appropriate, work performed by the Community's independent certified public accountants and independent actuary. It is noted that the balance sheet included herein was reported as of December 31, 2011, on a statutory actuarial basis, pursuant to Insurance Regulation No. 140 (11 NYCRR 350).

A review was also made of the following items:

- Community documents
- Compliance with By-laws
- Occupancy levels
- Financial documents
- Minutes of Board of Trustees' meetings

This report on examination is confined to financial statements and comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

A review was also made to ascertain what actions were taken by the Community with regard to comments and recommendations contained in the prior report on examination.

2. DESCRIPTION OF THE COMMUNITY

The Community was formed on June 3, 1992. Kendal is a continuing care retirement community (CCRC) as defined in Article 4601 of the New York Public Health Law. The Community received a certificate of authority issued by the New York State Department of Health and approved by the New York State Continuing Care Retirement Community Council on July 16, 1993. The CCRC began operations on December 26, 1995. Kendal is a New York State not-for-profit organization and is a tax-exempt organization per Section 501(c)(3) of the Internal Revenue Code.

The Community consists of two hundred twelve (212) independent living units ranging from studios to two-bedroom units with a den and a seventy-one (71) bed health center consisting of a thirty-six (36) bed adult care facility and a thirty-five (35) bed skilled nursing facility. In addition, the Community includes such common areas as dining rooms, lounges, health club, beauty/barber shop, library, auditorium, and administrative areas.

The Community provides residents with a continuum of services, including independent living, adult care and skilled nursing home care. As a condition precedent to providing these services, the Community enters into a lifecare contract with each prospective resident that sets forth the responsibilities of both parties. For the right to occupy, use the

living accommodations and utilize the services of the Community, each resident is required to pay an entrance fee and monthly service fee based on the size and type of living unit and the number of occupants.

The following is a description of the three types of lifecare contracts offered to prospective residents by the Community:

- Lifecare

The Lifecare contract provides personal care and nursing care. The entrance fee is due in two installments. Ten percent (10%) of the entrance fee is due when the contract is signed, with the remainder to be paid on or before the occupancy date. During the first 90 days, the entrance fee collected by the Community is fully refundable if the resident terminates the contract for any reason. After the 90-day period, the refund will be reduced by 2% for each month or fraction thereafter, as well as a 4% administrative fee and any cost incurred by the Community at the request of the resident, until the refund amount reaches zero.

- 50% Return of Capital Lifecare

The 50% Return of Capital Lifecare contract has the same healthcare provisions as the Lifecare contract. The entrance fee for this contract is higher compared to the Lifecare contract and is due in two installments. Ten percent (10%) of the entrance fee is due when the contract is signed, with the remainder to be paid on or before the occupancy date. During the first 90 days, the entrance fee collected by the Community is fully refundable if the resident terminates the contract for any reason. After the 90-day period, the refund will be reduced by 2% for each month or fraction thereafter, as well as a 4% administrative fee, until

the refund amount reaches 50% of the entrance fee. Any cost incurred by the Community at the request of the resident, could reduce the refund amount below 50% of the entrance fee.

- Modified Continuing Care

The Modified Continuing Care contract provides limited skilled nursing care, compared to the other two Lifecare contracts. This contract includes 100 days of prepaid skilled nursing care. Days in the skilled nursing facility which are paid under Medicare do not count towards the 100 prepaid days. After 100 days in the skilled nursing facility, the resident pays, for up to three years, the Community's per diem for services received. After three years, the resident no longer has to pay the per diem and skilled nursing care will be covered at no charge.

The entrance fee for this contract is lower than the Lifecare contracts and, like the other two contracts, is due in two installments. Ten percent (10%) of the entrance fee is due when the contract is signed, with the remainder to be paid on or before the occupancy date. During the first 90 days, the entrance fee collected by the Community is fully refundable if the resident terminates the contract for any reason. After the 90-day period, the refund will be reduced by 2% for each month or fraction thereafter, as well as a 4% administrative fee and any cost incurred by the Community at the request of the resident, until the refund amount reaches zero.

A. Corporate Governance

Pursuant to the Community's Charter and By-laws, management of the Community is vested in a Board of Trustees ("Board") comprised of no less than ten (10) and no more than twenty (20) members.

As of December 31, 2012, the Community's Board of Trustees was comprised of twenty (20) members, as follows:

<u>Name</u>	<u>Principal Business Affiliation</u>
Martha Armstrong Ithaca, New York	Vice President & Director, Tompkins County Area Development, Inc.
James A. Brown Ithaca, New York	Executive Director, United Way of Tompkins County
David Call Ithaca, New York	Resident, Kendal at Ithaca, Inc.
Harold D. Craft Berkshire, New York	VP Emeritus & Senior University Consultant, Cornell University (Retired)
Henrik N. Dullea Ithaca, New York	Vice President for University Relations Emeritus, Cornell University (Retired)
Shirley M. Durfee Ithaca, New York	Resident, Kendal at Ithaca, Inc.
Betsy East Ithaca, New York	Assistant Dean, College of Engineering, Cornell University
Gerald A. Kinchy Milan, Pennsylvania	Attorney, Kinchy Law Office
John A. Krout Ithaca, New York	Professor of Gerontology, Ithaca College
David K. McNiff Ithaca, New York	Senior Investment Officer, Cornell University
Susan Nohelty Ithaca, New York	Vice President for Patient Services, Cayuga Medical Center
Mary George Opperman Ithaca, New York	Vice President for Human Resources, Cornell University
Hannah Richter Genoa, New York	Dietician, Auburn Community Hospital
Tanya Saunders Ithaca, New York	Assistant Provost and Dean of the Division of Interdisciplinary & International Studies, Ithaca College
Roger Sibley Ithaca, New York	Executive Director, Franziska Racker Center

<u>Name</u>	<u>Principal Business Affiliation</u>
Carol U. Sisler Ithaca, New York	Resident, Kendal at Ithaca, Inc.
Donald S. Stewart Ithaca, New York	Executive VP & Senior Trust Officer, Tompkins Trust Company
Bryan Warren Ithaca, New York	President, Warren Real Estate
William D. White Ithaca, New York	Professor, Cornell University
Alene Wyatt Ithaca, New York	Resident, Kendal at Ithaca, Inc.

According to the Community's By-Laws, the Board of Trustees is required to meet at least quarterly each year, of which one (1) of the meetings is designated as the annual meeting of the Board of Trustees. Unless the Board designates a different date, the annual meeting is to take place on the third Wednesday of March of each year. Special meetings of the Board of Trustees may be called by the Chairman of the Board or by any three (3) trustees.

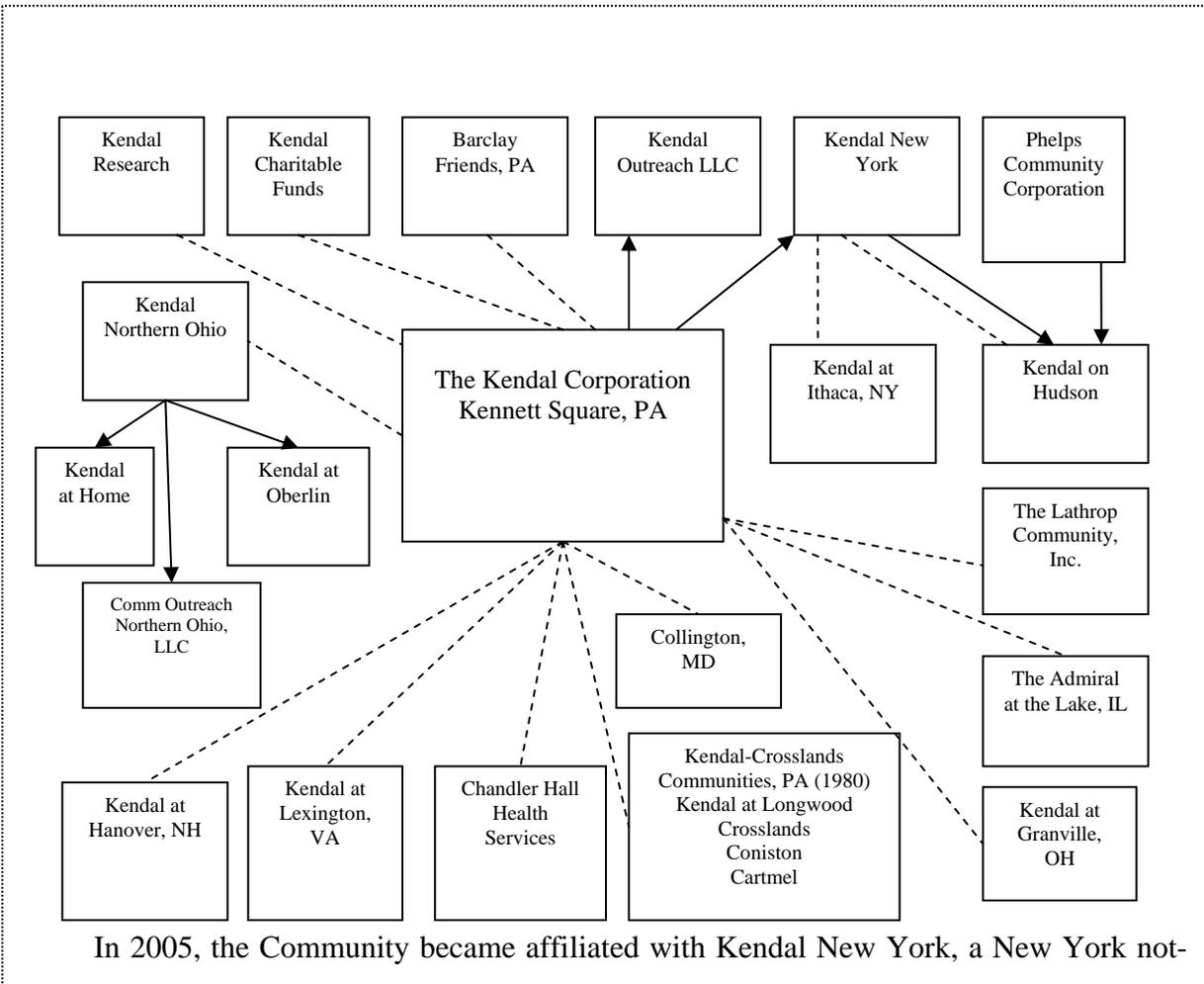
A review of the minutes of the meetings of the Board of Trustees held during the examination period revealed that the meetings were generally well attended, with all Board members attending at least one-half of the meetings that they were eligible to attend.

The officers of the Community as of December 31, 2012 were as follows:

<u>Name</u>	<u>Title</u>
Gerald A. Kinchy	Board Chairman
Harold D. Craft	Board Vice Chairman
Daniel Governanti	Executive Director/Chief Executive Officer
David K. McNiff	Board Treasurer
Tanya Saunders	Board Secretary
Ann E. Wall	Director of Finance/Chief Financial Officer

B. Holding Company System

The structure of the Community's holding company system as of December 31, 2012 was as follows:



for-profit corporation, through the Community's By-laws and an affiliation agreement titled "Mutual Expectations, System Services, and Financial Understandings" ("Agreement"), between the two entities. Together, Kendal New York and the Kendal Corporation and its affiliates comprise the Kendal Holding Company System. The Agreement, approved by the New York State Department of Health, provides for the Community's CEO to be accountable to the President of Kendal New York for managing the Community in harmony with the values, standards, and strategic plans of the Kendal System. The Agreement calls for the Community to pay Kendal New York a system fee. This fee is for the usage of the Kendal

name and for basic services such as operational support, administration support, Information Technology and benefits management.

Pursuant to the Agreement, Kendal New York must approve the election of Board members of the Community and any amendments to the Articles of Incorporation or specific sections of the Community's By-laws. Furthermore, Kendal New York must approve changes in corporate purpose, the substance of resident contracts, the incurrence of debt above a specified value, the purchase, sale, lease, disposition or improvement(s) of any real estate above a specified value, and the dissolution or merger with another entity or division, or acquiring control of another entity.

C. Occupancy Rates

As indicated in Section 2 of this report, the Community consists of two-hundred-twelve (212) independent living units, and a seventy-one-bed (71) health center comprised of thirty-six (36) adult home beds and thirty-five (35) skilled nursing home beds.

The following reflects the occupancy rates at each year-end of the examination period and as of December 31, 2013 for each of the facilities within the Community:

	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Independent living units	93.4%	93.4%	92.0%	88.2%
Adult care facility	77.7%	77.8%	77.2%	82.5%
Skilled nursing facility	100%	100.0%	87.8%	96.1%

As the above chart indicates, the occupancy rate of the independent living units was relatively stable during the examination period. However, as of December 31, 2013, the occupancy rates relative to the independent living units decreased to 88.2%, compared to an

actuarially determined acceptable occupancy level of approximately 95%. The decline in independent living unit occupancy rate was primarily attributed to a larger than expected number of residents being transferred to the adult care facility during 2013.

It is recommended that the Community take the necessary steps to increase its occupancy levels relative to its independent living units to an actuarially acceptable level of (95%) occupancy.

D. Disaster Recovery/Business Continuity Plans

The Community maintains business continuity and disaster recovery plans that provide for the essential maintenance of services to the Community's residents in the event of a disaster.

E. Accounts and Records

During the course of the examination, it was noted that the Community's treatment of certain items was not in accordance with financial statement instructions. A description of such items is as follows:

General Interrogatory

The Community is required to provide information relative to its independent certified public accountant, consulting actuary, escrow agent and financial institutions in Items 19(a) through 19(d) of the General Interrogatories of its filed annual statement. The instructions for Items 19(a) through 19(d) of the filed General Interrogatory state:

“For each item indicate the appropriate name, address and phone number. If the response is different than reported in the previous statement indicate “yes” in the space provided; if the response is the same as reported in the previous statement indicate “no” in the space provided.”

The examination review indicated that the Community only provided a “Yes” or “No” response to each category, failing to provide the complete information as required.

It is recommended that the Community comply with the instructions of the General Interrogatory of the annual statement, by providing the required information relative to its independent certified public accountant, consulting actuary, escrow agent and financial institutions.

Common stocks and preferred stocks

Parts 350.6(a), (b) and (c) of Insurance Regulation No. 140 (11 NYCRR 350) set forth requirements for the assets supporting reserve liabilities. Part 350.6(c)(1) of Insurance Regulation No.140 (11 NYCRR 350.6(c)(1)) states in part:

“(c) After satisfying the requirements of subdivisions (a) and (b) of this section, assets supporting reserve liabilities may be invested in any of the following:

(1) common or preferred stock, provided that any such investment shall be limited to no more than 5% of the market value of total assets supporting reserve liabilities,...

The examination revealed that the aggregate total value of the Community’s common stocks and preferred stocks as of December 31, 2012 was more than five percent (5%) of assets supporting reserve liabilities as shown in the balance sheet of the Community’s most recent actuarial study. It should be noted that, as of the writing of this report, the latest available actuarial study was made for the period as of December 31, 2011.

It is recommended that the Community comply with the requirements of Part 350.6(c)(1) of Insurance Regulation No. 140 (11 NYCRR 350.6(c)(1)) by refraining from further investment in common and/or preferred stocks when the total aggregate value of the Community's common and preferred stocks exceeds 5% of net assets supporting reserve liabilities, as reported within the balance sheet of the Community's most recent actuarial study.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following statements show the assets, liabilities and actuarial surplus as of December 31, 2011 as contained in the Community's 2012 filed annual statement presented on a statutory actuarial basis pursuant to Insurance Regulation No. 140 (11 NYCRR 350), a condensed summary of operations and a reconciliation of the actuarial surplus account for the years under review.

The examiner's review of a sample of transactions did not reveal any differences which materially affected the Community's financial condition as contained in its December 31, 2011 filed annual statement.

<u>Assets</u>	<u>Examination</u>	<u>Community</u>
Cash and invested assets	\$ 29,743,000	\$ 29,743,000
Accounts receivable and prepaid expenses	2,458,000	2,458,000
Land	2,572,000	2,572,000
Building	46,166,000	46,166,000
Furniture, fixtures and equipment	9,200,000	9,200,000
Accumulated depreciation	(16,889,000)	(16,889,000)
Deferred financing costs	357,000	357,000
Long term debt	<u>(19,573,000)</u>	<u>(19,573,000)</u>
Total assets	\$ <u>54,034,000</u>	\$ <u>54,034,000</u>

	<u>Examination</u>	<u>Community</u>
<u>Liabilities</u>		
Actuarial reserve	\$ <u>52,287,000</u>	\$ <u>52,287,000</u>
Total liabilities	\$ <u>52,287,000</u>	\$ <u>52,287,000</u>
Total net surplus	\$ <u>1,747,000</u>	\$ <u>1,747,000</u>
Total liabilities and net surplus	\$ <u>54,034,000</u>	\$ <u>54,034,000</u>
Ratio of net surplus to total liabilities	<u>3.34%</u>	<u>3.34%</u>

Note: It should be noted that the asset values herein are reported on a statutory actuarial basis. As such, the values differ from the certified financial statements prepared by the Community's certified public accountants.

B. Statement of Revenue, Expenses and Change in Actuarial Surplus

The statement of revenue and expenses is presented on a statutory modified GAAP basis for the three-year examination period January 1, 2009 through December 31, 2011.

Revenue

Monthly maintenance fees	\$37,868,782	
Other revenue from residents	790,177	
Earned entrance fees (net of refunds)	10,028,446	
Patient revenue from nonresidents	100,151	
Interest and dividend income	2,130,711	
Aggregate write-ins for other operating revenue	<u>522,546</u>	
Total revenue		\$51,440,813

Expenses

Interest expense	\$ 2,254,596	
Facility and dining expenses	14,487,376	
Health expenses	11,794,867	
Administration expenses	11,849,525	
Depreciation and amortization charges	6,056,200	
Real estate taxes	2,873,187	
NYS health facilities assessment	<u>239,901</u>	
Total expenses		<u>\$49,555,652</u>
Net income		\$ <u>1,885,161</u>

Change in Actuarial Surplus

Actuarial surplus increased \$1,747,000 during the three-year actuarial examination period January 1, 2009 through December 31, 2011, detailed as follows:

Surplus, per report on examination, as of December 31, 2008			\$	0
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>		
Net income	\$1,885,161			
Net realized and unrealized capital gains	1,842,170			
Change in paid-in and contributed capital	48,118			
Aggregate write-ins for other changes in net assets	292,399			
Statutory adjustment as per examination	<u>0</u>	<u>\$2,320,848</u>		
Net increase in actuarial surplus				<u>\$1,747,000</u>
Surplus, per report on examination, as of December 31, 2011				<u>\$1,747,000</u>

4. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination as of December 31, 2009 contained five (5) comments and recommendations as follows (page number refers to the prior report):

<u>ITEM NO.</u>	<u>PAGE NO.</u>
------------------------	------------------------

Management

- | | | |
|----|---|---|
| 1. | It is recommended that the Community report in its filed annual statements only Board members who are actually on the Board of Directors as of the filing date of the annual statement. | 7 |
|----|---|---|

The Community has complied with this recommendation.

Disclosure Statement

- | | | |
|----|---|----|
| 2. | It is recommended that, if there are no changes in the Community's scope of coverages, the Community provide the rates and the average dollar amount of each rate increase for the previous five years within the applicable areas of its Disclosure Statement, as required by Section 4606(8) of the New York Public Health Law. | 12 |
|----|---|----|

The Community has complied with this recommendation.

- | | | |
|----|---|----|
| 3. | It is recommended that the Community maintain in its standard information sheet, 12 point font size, as required by Section 4606(14) of the New York Public Health Law. | 12 |
|----|---|----|

The Community has complied with this recommendation.

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|----|---|----|
| 4. | It is recommended that the Community indicate whether its nursing beds are on-site or off-site in its standard information sheet, as required by Section 4606(14)(c) of the New York Public Health Law. | 13 |
|----|---|----|

The Community has complied with this recommendation.

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|----|---|----|
| 5. | It is recommended that the Community include an approved standard information sheet in its marketing brochure, as required by Section 4606(14) of the New York Public Health Law. | 13 |
|----|---|----|

The Community has complied with this recommendation.

5. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. <u>Occupancy Rates</u></p> <p>It is recommended that the Community take the necessary steps to increase its occupancy levels relative to its independent living units to an actuarially acceptable level of (95%) occupancy.</p>	<p>10</p>
<p>B. <u>Accounts and Records</u></p> <p>i. It is recommended that the Community comply with the instructions of the General Interrogatory of the annual statement, by providing the required information relative to its Independent certified public accountant, consulting actuary, escrow agent and financial institutions.</p> <p>ii. It is recommended that the Community comply with the requirements of Part 350.6(c)(1) of Insurance Regulation No. 140 (11 NYCRR 350.6(c)(1)) by refraining from further investment in common and/or preferred stocks when the total aggregate value of the Community’s common and preferred stocks exceeds 5% of net assets supporting reserve liabilities as reported within the balance sheet of the Community’s most recent actuarial study.</p>	<p>11</p> <p>12</p>

Respectfully submitted,

_____/S/_____
Kaiwen K. Guo
Senior Insurance Examiner

STATE OF NEW YORK)
)SS.
)
COUNTY OF NEW YORK)

KAIWEN K. GUO, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

_____/S/_____
Kaiwen K. Guo

Subscribed and sworn to before me
This ____ day of _____ 2014.

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

Kevin Guo

as a proper person to examine the affairs of

Kendal at Ithaca

and to make a report to me in writing of the condition of said

CCRC

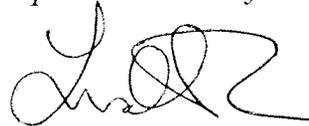
with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York

this 13th day of November, 2013

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:



Lisette Johnson
Bureau Chief
Health Bureau

