

**REPORT ON EXAMINATION**

**OF**

**PECONIC LANDING AT SOUTHOLD, INC.**

**AS OF**

**DECEMBER 31, 2011**

**DATE OF REPORT**

**DECEMBER 8, 2014**

**EXAMINER**

**EDOUARD MEDINA**

## **TABLE OF CONTENTS**

<b><u>ITEM NO.</u></b>	<b><u>PAGE NO.</u></b>
1. Scope of the examination	2
2. Description of the Community	3
A. Corporate governance	5
B. Holding company system	8
C. Expense allocation procedure	16
D. Occupancy rates	16
E. Disaster recovery plan	17
F. Custodial arrangements	17
G. Accounts and records	20
3. Financial statements	24
A. Balance sheet	24
B. Statement of revenue and expenses and change In actuarial surplus	26
4. Subsequent events	27
5. Compliance with prior report on examination	29
6. Summary of comments and recommendations	32



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

December 8, 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 30898, dated October 26, 2012, attached hereto, I have made an examination into the condition and affairs of Peconic Landing at Southold, 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, 2011, and respectfully submit the following report thereon.

The examination was conducted at the home office of Peconic Landing at Southold, Inc., located at 1500 Brecknock Road, Greenport, New York.

Wherever the designations the “Community” or “Peconic Landing” appear herein, without qualification, they should be understood to indicate Peconic Landing at Southold, 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, 2008. This examination covers the three-year period from January 1, 2009 through December 31, 2011. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets and liabilities as of December 31, 2011, 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, 2010, 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
- Board of directors' meeting minutes
- Financial documents
- Occupancy levels

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**

Peconic Landing is a continuing care retirement community (“CCRC”) as defined in Article 46 of the New York Public Health Law. The Community received a certificate of authority from the New York State Continuing Care Retirement Community Council effective July 31, 1998. The Community commenced operations on August 15, 2002.

Peconic Landing is organized as a cooperative life care community and offers a range of services including: independent living, enriched housing (assisted living) and full-time skilled nursing units.

Residents of the independent living units pay an entrance fee, purchase shares in Peconic Landing Housing Association Cooperative, Inc. (the “Cooperative”) and enter into a Care Contract (life care contract), under which such residents have the right to occupy an independent living unit for the remainder of their life, or until such time as they need to be transferred to the Community’s enriched housing units or to the

Community's skilled nursing units. Currently, the enriched housing units and skilled nursing units may be occupied by individuals who are not residents with life care contracts and who make payments on a per-diem basis. However, life care contract residents have priority access to enriched housing units and the skilled nursing unit facilities.

Residents pay monthly fees relative to their occupancy of an independent living unit, enriched housing unit, or a skilled nursing unit, according to the Care Contract (life care contract) and Subscription Agreement entered into by Peconic Landing, the Cooperative and the residents. If the Care Contract and the Subscription Agreement are terminated within the first 90 days of occupancy, the health care reserve fee is fully refundable. Subsequent to 90 days of occupancy, the amount of the refundable health care reserve fee is reduced by a four percent (4%) processing fee, and an additional two percent (2%) fee per month of occupancy. No refunds are made after 48 months of occupancy.

The Community consists of 250 independent living units, comprised of 149 apartments and 101 cottages; 26 enriched housing beds; 44 nursing beds; dining rooms; common areas; and a kitchen area that supports the operation of the Community's dining services.

The Community, during the examination period, converted two (2) cottages previously available for sale to prospective residents into guests quarters, and four (4) apartments previously used as guest quarters, into two one-bedroom units, which will

be offered for sale to prospective residents. The conversion does not affect the approved configuration of the Community (250 living units; 26 enriched housing units; and 44 skilled nursing beds). This conversion project was approved by the New York State Department of Health on June 18, 2010.

It is noted that at the time an independent living unit becomes vacant, and is resold, the Community charges the seller of the unit a remarketing fee and a \$15,000 capital improvements fee. The proceeds paid to the seller by the Community are the price paid by the new member for the unit less the remarketing fee and the \$15,000 capital improvements fee. Effective January 1, 2011, the Community increased its remarketing fee from six (6) percent to ten (10) percent of the unit resale price, and included a \$15,000 charge for contract renewal and replacement for all new residents. Contracts in effect prior to January 1, 2011 will continue to pay the previous six (6) percent remarketing fee.

The Community revised its Disclosure Statement, Care Contact, Proprietary Lease, and Subscription Agreement to reflect the above changes. The revised Disclosure Statement, Care Contact, Proprietary Lease, and Subscription Agreement were approved by the New York State Department of Health on January 28, 2009.

A. Corporate Governance

Pursuant to the Community's charter and by-laws, management of the Community is to be vested in a board of trustees composed of no less than seven members. As of

December 31, 2011, the Community's board of trustees was comprised of the following twelve (12) members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Luke Babcock Sag Harbor, New York	Analyst and Manager, Saybrook Capital, LLC
Paul J. Connor III Mattituck, New York	President and CEO, Eastern Long Island Hospital
Thomas B. Doolan Southold, New York	President and CEO, Southampton Hospital
Gregory N. Ferraris Sag Harbor, New York	Co-Chair Finance Committee, Banducci, Katz & Ferraris, LLP
Robert T. Goldman New Suffolk, New York	Retired
Alice Hussie Southold, New York	Retired
Rev. Peter M. Larsen Southampton, New York	Member of the Clergy, St. John Episcopal Church
John M. May Southold, New York	President, Treasurer and Chair, Peconic Landing at Southold, Inc.
Sandra Novick Southold, New York	Employee, ABA Marketing Network
Rosamond Baiz Southold, New York	Owner, The Old Fields Vineyards
Thomas McCarthy Southold, New York	Owner, Thomas J. McCarthy Real Estate, Inc.
Edward Wellington Webb II Orient, New York	Retired

Pursuant to its by-laws, the Community's board is required to meet once each year for an annual meeting, but may hold special meetings as desired. At least four (4) meetings were held, on a quarterly basis, during each year of the examination period. A review of the minutes of the board meetings of the Community held during the examination period indicated that two (2) board members attended less than 50%, and two (2) other board members attended 52% of the board meetings that they were eligible to attend, respectively. It is noted that the four board members were active with regard to board committee meetings and other Community activities during the examination period.

Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the Community. Members who fail to attend at least one-half of the board's regular meetings that they were eligible to attend, unless appropriately excused, do not fulfill such criteria.

It is recommended that board members attend board meetings consistently to set forth their views on relevant matters so that appropriate policy decisions may be reached by the board.

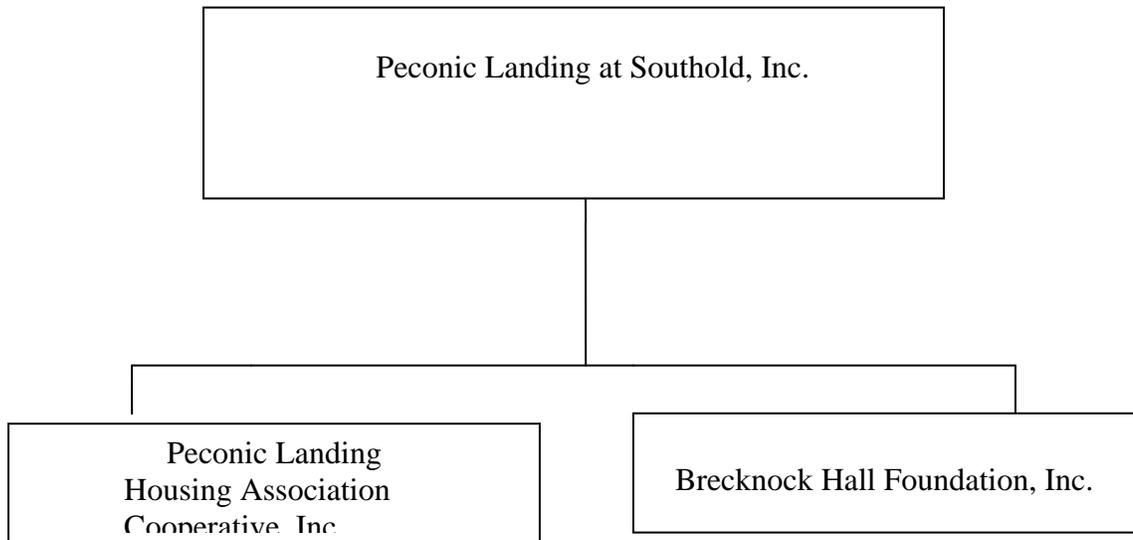
A similar recommendation was included within the prior report on examination.

The principal officers of the Community as of December 31, 2011, were as follows:

<u>Name</u>	<u>Title</u>
Robert Syron	Chief Executive Officer
Steven Carroll	Chief Financial Officer
John May	President, Treasurer and Chair

B. Holding Company System

The following is a chart of the Community's holding company system as of December 31, 2011:



Peconic Landing Housing Association Cooperative, Inc.

Peconic Landing Housing Association Cooperative, Inc. is a cooperative corporation formed by the members of the Peconic Landing board of directors pursuant to the provisions of the New York Cooperative Corporations Law, to provide cooperative housing units to Community members who purchase shares in the Cooperative and enter into Care Agreements with Peconic Landing at Southold, Inc. As such, the independent living units are owned as cooperative housing by the Community's residents.

Peconic Landing, pursuant to a long term lease agreement ("Lease Agreement"), leases a portion of its real property to the Cooperative for the cooperative residential portion of the Community. The Cooperative owns the improvements on the leased premises, which include cooperative housing units used for the independent housing component of the Community.

Pursuant to the Lease Agreement, upon commencement of the lease term, the Cooperative has agreed to pay, before delinquency, all charges for utilities, including, but not limited to: gas, electricity, light, heat, water, power and telephone or other communication service used, rendered or supplied, upon or in connection with the leased premises and the residential improvements. The Lease Agreement was included as part of the initial Peconic Landing Disclosure Statement and Plan of Organization and was approved by the New York State Department of Health in August 1998. The Long Term Lease Agreement was amended on November 28, 2000.

According to the terms of the Lease Agreement, the residential improvements, as mentioned previously in this report on examination, are the property of the Cooperative, and Peconic Landing shall not have the right to remove said residential improvements from the leased properties without the Cooperative's prior written consent.

Also, according to the Lease Agreement, the Cooperative is responsible for the payment of all real property taxes and all necessary repairs and replacements to keep the residential area, the parking area, the sidewalks and the curbs maintained.

Although the Cooperative leases a portion of the residential Community through the Lease Agreement, the ultimate responsibility to insure an integrated and cohesive living environment for the residents of the entire Community, pursuant to New York Public Health Law Article 46 and the Care Contract, remains with Peconic Landing. Therefore pursuant to a Maintenance and Services Agreement between Peconic Landing at Southold, Inc. ("the Sponsor") and Peconic Landing Housing Association Cooperative, Inc. ("the Cooperative") Peconic Landing assumed the Cooperative's responsibilities as Lessee and assures the management, and operation of the Community and the furnishing of all services to the members pursuant to the Care Agreement. This Maintenance and Services Agreement, as was the long term lease agreement, was included as part of the initial Peconic Landing Disclosure Statement and Plan of Organization and was approved by the New York State Department of Health in August 1998.

The November 2000 amended Lease Agreement was not submitted to the New York State Department of Health for approval. Therefore, the Community is not in compliance with Section 901.10(d) of the Administrative Rules and Regulations of the New York State Department of Health (10 NYCRR 901.10(d)).

Section 901.10(d) of the Administrative Rules and Regulations of the New York State Department of Health states, in part:

“... (d) ... a governing body entering a new management contract or revising a management contract subsequent to the issuance of a certificate of authority shall submit a copy of the contract with the submission of the disclosure statement in accordance with section 901.9(a)(2)...”

Section 901.9(a)(2) of the Administrative Rules and Regulations of the New York State Department of Health states:

“(a) Notice of changes in the following shall be submitted to the Commissioner as they occur...:

- (1) the life care contract;
- (2) the initial disclosure statement;
- (3) changes in the construction timetable which extend the completion date six months beyond the current approved completion date; and
- (4) the entrance fee and monthly care fees.”

It is recommended that the Community comply with the requirements of Sections 901.10(d) of the Administrative Rules and Regulations of the New York State Department of Health and submit its amended Long Term Lease Agreement to the New York State Department of Health for review and approval. Since the Maintenance and Services Agreement is a subsidiary agreement to the Long Term Lease Agreement, it is

also recommended that the Community also submit the Maintenance and Service Agreement to the New York State Department of Health for review and approval.

Brecknock Hall Foundation, Inc. (the “Foundation”)

Under the previous Stewardship Agreement made between Peconic Landing at Southold, Inc. (“Licensor”) and the Brecknock Hall Foundation, Inc. (“Steward”), effective July 1, 2005, Peconic Landing granted to the Steward a license for the purpose of maintaining, repairing, improving and operating the historic structure of Brecknock Hall, which is a 19<sup>th</sup> century stone building located on the grounds of Peconic Landing at Southold, Inc. However, it was noted that according to the agreement, the facilities, including Brecknock Hall, remain the property of Peconic Landing at Southold, Inc.

The Brecknock Hall Foundation, Inc. is financed by outside donations and loans from Peconic Landing. The initial loan, in the amount of \$200,000, was made by Peconic Landing to the Foundation on December 1, 2007, payment in full to be due on August 31, 2017, in accordance with the terms of the promissory note. The total aggregate loan amount due to Peconic Landing from the Foundation was \$215,500 as of the last examination date, December 31, 2008; \$549,771 as of December 31, 2011; \$602,006 as of December 31, 2012; and 537,438 as of December 31, 2013. The loans include monies transferred from Peconic Landing to the Brecknock Hall Foundation to pay for the Foundation’s operational expenses. Such loans are non-interest bearing and were issued without the approval of the Community’s board of directors and without a formalized repayment plan. The loans were not submitted to the Department for review prior to issuance to the Foundation.

Section 715(a) of New York Not-For-Profit Corporation Law states:

“(a) No corporation shall enter into any related party transaction unless the transaction is determined by the board to be fair, reasonable and in the corporation's best interest at the time of such determination. Any director, officer or key employee who has an interest in a related party transaction shall disclose in good faith to the board, or an authorized committee thereof, the material facts concerning such interest”

It is recommended that Peconic Landing comply with the requirements of Section 715(a) of the New York Not-For-Profit Corporation Law and follow a prudent business practice by (i) establishing a written loan agreement each time it loans money, (ii) including a formalized repayment plan in the agreement, (iii) submitting the agreement to its board of directors for approval, and (iv) submitting the agreement to the New York State Department of Financial Services for review.

In August 2009, the Brecknock Hall Stewardship Agreement was revised. The revised Stewardship Agreement establishes a framework whereby Brecknock Hall will be maintained and promoted as a historic landmark, while being used for activities that will benefit Peconic Landing and the North Fork Long Island community, while generating funds to contribute to the preservation, protection and operation of Brecknock Hall.

Under this revised agreement, Peconic Landing owns, operates, and takes full responsibility for promoting, marketing, operating, financing and maintaining Brecknock Hall. The Foundation also received a license from Peconic Landing to act as Steward.

According to the revised agreement, the Chairperson of Peconic Landing's board maintains approval of the appointment of the Brecknock Hall Foundation, Inc. Board Chairperson. The CEO of Peconic Landing is also appointed as a voting member of the Brecknock Hall Foundation, Inc. board of directors. Brecknock Hall has been designated as a site for community and private activities, for cultural events, for offices and for lodging.

The Community did not submit the revised Stewardship Agreement to the New York State Department of Health for review, as required by Part 901.10(d) (10 NYCRR 901.10(d)) of the Administrative Rules and Regulations of the New York State Department of Health, which states in part:

“...(d) A governing body wishing to enter into a management contract shall submit a proposed written contract to the department upon submission of a certificate of authority application in accordance with section 900.3(c)(13)...or a governing body entering a new management contract or revising a management contract subsequent to the issuance of a certificate of authority shall submit a copy of the contract with the submission of the disclosure statement in accordance with section 901.9(a)(2)...”

It is recommended that the Community submit its revised Stewardship Agreement with the Brecknock Hall Foundation, Inc. to the New York State Department of Health for review, as required by Part 901.10(d) (10 NYCRR 901.10(d)) of the Administrative Rules and Regulations of the New York State Department of Health.

A similar recommendation was included within the prior report on examination.

As of the examination date, the Stewardship Agreement was not made part of the Peconic Landing Disclosure Statement. Therefore, Peconic Landing was not in compliance with Section 4606(9) of the New York Public Health Law, which states in part:

“Prior to the execution of a contract, or before the transfer of any money, other than a refundable priority reservation fee or non-refundable priority reservation agreement application fee, to an operator by or on behalf of a prospective resident, whichever occurs first, the operator shall deliver to the person with whom the contract is to be entered into or the person's legal representative the most recent annual statement as required by section forty-six hundred seven of this article, and an initial disclosure statement which contains the following...

(9). If the applicant is the subsidiary corporation or the affiliate of another corporation, a statement identifying the parent corporation or the other affiliate corporation, the primary activities of such parent, or other affiliate corporation, the interest in the applicant held by such parent or other affiliate corporation, and the extent to which the parent corporation will be responsible for the financial and contractual obligations of the subsidiary;”

It is recommended that the Community comply with the requirements of Section 4606(9) of the New York State Public Health Law and include the required wording relative to the primary activities, interest and financial responsibilities between the Community and the Brecknock Hall Foundation Inc., as stated within the Brecknock Hall Stewardship Agreement within the Community's Disclosure Statement.

A review of the Foundation's reported financial statement as of December 31, 2013, indicated that the Foundation was insolvent as of such date in the amount of \$308,852.

C. Expense Allocation Procedure

The Community generally uses its property square footage as the basis to allocate expenses among its affiliates. However, the Community has not yet adopted a formal written expense allocation procedure, allowing for such basis.

It is recommended that the Community adopt a formal written expense allocation procedure for the purpose of allocating expenses among its affiliates.

D. Occupancy Rates

The occupancy rates for the years covered by the examination and the year subsequent to the examination period were as follows:

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Independent Living	97.2%	96.4%	95.6%	96.3%
Enriched Housing	75.6%	88.2%	84.8%	66.6%
Skilled Nursing	95.7%	98.6%	97.2%	92.9%

The Community's most recent actuarial report for the period ending December 31, 2010 states in part:

“...In order for the Community to remain an on-going concern an assumption is made that it be able to market and maintain a 95% occupancy level in the Independent Living Units, 95.8% in Enriched Housing, and 95.5% occupancy in the Skilled Nursing Facility over the next 10 years.”

With reported occupancy levels of 66.6% in 2012, the above table indicates that the Enriched Housing component was significantly below the occupancy rate level, determined by the Community's actuary for Peconic Landing to be a going concern.

The Community has subsequently improved its occupancy rates, particularly with regard to its Enriched Housing Units, however, still remained below the occupancy goal for its Enriched Housing Units as determined by its actuarial consultant as of the date of this report on examination.

E. Disaster Recovery Plan

It was noted that the transportation procedures for the evacuation of residents were not included in the Community's Emergency Procedures Manual.

It is recommended that the Community include specific transportation procedures for the evacuation of its residents in its Emergency Procedures Manual.

A similar recommendation was included in the prior report on examination.

F. Custodial Arrangements

The Community does not maintain custodial agreements that safeguard its investments that are held in banking institutions. The Department is cognizant of the fact that certain Community investments are held with an existing bank trustee approved pursuant to the Community's bond indenture. Therefore, the Community is

limited in its ability to retroactively amend the bank trustee documents that were established under the initial bond financing arrangement.

However, for its investments that are not held in bank trustee accounts established pursuant to the bond indenture and where the Community's investments are held via regular depository agreements directly with banks, the Community does not have the same restrictions as with the bank trustee accounts.

At a minimum, the following safeguards and controls are recommended for inclusion in investment custodial account agreements according to the National Association of Insurance Commissioners ("NAIC") *Financial Condition Examiners Handbook, 2012 Edition*:

- a. The custodian is obligated to indemnify for any loss of securities in the custodian's custody, except that, unless domiciliary state law, regulation or administrative action otherwise require a stricter standard, the custodian shall not be so obligated to the extent that such loss was caused by other than the negligence or dishonesty of the custodian;
- b. If domiciliary state law, regulation or administrative action requires a stricter standard of liability for custodians of insurance company securities than that set forth above then such stricter standard shall apply;
- c. In the event of a loss of the securities for which the custodian is obligated to indemnify the insurance company, the securities shall be promptly replaced or the value of the securities and the value of any loss of rights or privileges resulting from said loss of securities shall be promptly replaced;
- d. The custodian shall not be liable for any failure to take any action required to be taken hereunder in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosions, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control;

e. In the event that the custodian gains entry in a clearing corporation through an agent, there should be a written agreement between the custodian and the agent that the agent shall be subjected to the same liability for loss of securities as the custodian. If the agent is governed by laws that differ from the regulation of the custodian, the Superintendent of Insurance may accept a standard of liability applicable to the agent that is different from the standard liability;

f. If the custodial agreement has been terminated or if 100% of the account assets in any one custody account have been withdrawn, the custodian shall provide written notification, within three business days of termination or withdrawal, to the insurer's domiciliary commissioner;

g. During regular business hours, and upon reasonable notice, an officer or employee of the insurance company, an independent accountant selected by the insurance company and a representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, its records relating to securities, if the custodian is given written instructions to that effect from an authorized officer of the insurance company;

h. The custodian and its agents, upon reasonable request, shall be required to send all reports which they receive from a clearing corporation, which the clearing corporation permits to be redistributed including reports prepared by the custodian's outside auditors, to the insurance company on their respective systems of internal control;

i. To the extent that certain information maintained by the custodian is relied upon by the insurance company in preparation of its annual statement and supporting schedules, the custodian agrees to maintain records sufficient to determine and verify such information;

j. The custodian shall provide, upon written request from a regulator or an authorized officer of the insurance company, the appropriate affidavits, with respect to the insurance company's securities held by the custodian;

k. The custodian shall secure and maintain insurance protection in an adequate amount.

It is recommended, with regard to the Community's investments that are not held pursuant to a bond indenture, that the Community establish custodial agreements with the financial institutions that safeguard its investments and include the above enumerated protective safeguards and controls in those agreements.

A similar recommendation was included within the prior report on examination.

G. 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 generally accepted accounting principles as modified pursuant to Insurance Regulation No. 140 or annual statement instructions. A description of such items is as follows:

1. Accounts Receivable

The Community reported as an admitted asset on its actuarial balance sheet amounts receivable, applicable to Medicaid accounts which were overdue for more than 365 days as of the examination date and amounts receivable from various residents which were overdue in excess of 90 days as of the examination date.

Section 350.6(c)(7) of Insurance Regulation No. 140 (11 NYCRR 350) states in part:

“(c)...assets supporting reserve liabilities may be invested in any of the following:

“(7)...accounts receivable subject to the restrictions that they are expected to be paid and not more than: (i) 90 days overdue when the payor is not a government agency; and (ii) 12 months overdue when the payor is a government agency;”

It is recommended that the Community comply with the requirements of Section 350.6(c)(7) of Insurance Regulation No. 140 and report on its actuarial balance sheet,

as admitted assets, government agency receivables that are due within 365 days and non-government agency receivables that are due within 90 days of the determination date.

A similar recommendation was included in the prior report on examination.

## 2. Marketing Incentive

The Community, during the examination period, initiated a marketing incentive program entitled, “recapture program”. The recapture program provided potential residents the option of deferring a portion of the purchase price of a cottage unit. According to such recapture program incentive process, such deferred purchase price is due to the Community at the time the unit is resold. The total amount due to the Community relative to the recapture program as of December 31, 2011 was \$416,390.

The Community reported the \$416,390 as a prepaid expense in its filed December 31, 2011 annual statement.

Such reporting does not comply with the “*Instructions for Completing The Continuing Care Retirement Community (CCRC) Annual Statement Blank Calendar Year 2011*,” which states in part:

“...Prepaid Expenses – Amounts paid to creditors prior to the due date...”.

It is recommended that Peconic Landing comply with the “*Instructions for Completing The Continuing Care Retirement Community (CCRC) Annual Statement Blank*” by reporting as prepaid expenses only amounts paid to creditors prior to the due date.

It is also recommended that Peconic Landing report amounts due to the Community as a result of the recapture program as an accounts receivable item within its annual statement filings.

3. Common Stock Investment – Golf Memberships

The Community bought four (4) golf memberships from Island’s End Golf and Country Club, Inc. (“Island’s End”). In order to purchase a membership from Island’s End one has to own at least twenty (20) shares of that Company’s common stock. Therefore, in January, 2011, Peconic Landing purchased twenty (20) shares of Island's End common stock for \$10,000 (and also purchased the four 2011 memberships).

The four memberships cost \$12,280 a year, which Peconic Landing reported as a prepaid expense within its December 31, 2011 statutory annual statement and subsequently expensed such prepaid expenses within its books of account in 2012. The memberships are available to Peconic Landing to be used for their residents, visitors or employees.

Peconic Landing also reported the \$10,000 paid for the twenty (20) shares of Island's end common stock within prepaid expenses in its 2011 annual statement.

The above treatment of the \$10,000 payment for common stock (prepaid expenses) does not comply with the "*Instructions for Completing The Continuing Care Retirement Community (CCRC) Annual Statement Blank Calendar Year 2011*," which states in part:

“...Prepaid Expenses – Amounts paid to creditors prior to the due date...”

It is recommended that Peconic Landing comply with the "*Instructions for Completing The Continuing Care Retirement Community (CCRC) Annual Statement Blank*" by reporting as prepaid expenses only amounts paid to creditors prior to the due date, and report the 20 shares bought from Island's End within the asset account, "Common stock" in the Community's future filed annual statements.

### 3. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, and actuarial surplus as of December 31, 2010, as contained in the Community's 2011 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 presented in its financial statements contained in the December 31, 2011 filed annual statement.

#### A. Balance Sheet

<u>Assets</u>	<u>Examination</u>	<u>Community</u>
Cash and invested assets	\$ 16,267,473	\$ 16,267,473
Accounts receivable and prepaid expenses	2,359,201	2,359,201
Real estate related to the Community	133,777,722	133,777,722
Deferred financing costs	982,403	982,403
Deferred marketing costs	1,332,675	1,332,675
Escrow account	<u>10,303,670</u>	<u>10,303,670</u>
Total assets	<u>\$165,023,144</u>	<u>\$165,023,144</u>

Liabilities

Loans Payable	\$ 29,175,264	\$ 29,175,264
Actuarial reserve liabilities	<u>127,846,120</u>	<u>127,846,120</u>
Total liabilities	\$ <u>157,021,384</u>	\$ <u>157,021,384</u>
Actuarial surplus	\$ <u>8,001,760</u>	\$ <u>8,001,760</u>
Total liabilities and surplus	\$ <u>165,023,144</u>	\$ <u>165,023,144</u>

**Note:** It is 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 and Expenses and Change in Actuarial Surplus

The statement of revenue and expenses is presented on a GAAP basis, as modified pursuant to Insurance Regulation No. 140, for the three-year period, January 1, 2008 through December 31, 2010:

Revenue

Resident services	\$43,175,658	
Health care services	12,809,500	
Remarketing fee revenue	1,571,325	
Investment income	2,169,160	
Contributions (unrestricted)	313,022	
Net assets released from restrictions	1,688,827	
Other miscellaneous revenue	<u>1,516,742</u>	
Total revenue		\$63,244,234

Operating expenses

Health care	\$12,811,472	
Dietary	9,123,048	
Administration and general	15,261,458	
Maintenance and security	9,071,597	
Housekeeping and laundry	2,352,994	
Depreciation and amortization	14,961,639	
Interest on loans	7,138,392	
Interest on resale of units	3,429,369	
Net assets released from restrictions	<u>1,688,827</u>	
Total operating expenses		\$ <u>75,838,796</u>
Operating loss		<u>\$(12,594,562)</u>

Change in Actuarial Surplus

Actuarial surplus increased \$6,250,595 during the three-year period, January 1, 2008 through December 31, 2010, detailed as follows:

Actuarial surplus, per report on examination, as of December 31, 2007			\$ 1,751,165
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net loss		\$ 12,594,562	
Statutory adjustment as per examination*	<u>\$ 18,845,157</u>	<u>                    </u>	
Net increase in surplus			<u>6,250,595</u>
Actuarial surplus, per report on examination, as of December 31, 2010			<u>\$ 8,001,760</u>

\*Note: This adjustment represents the difference between the net income pertaining to the statutory modified GAAP basis of accounting and the actuarial surplus.

**4. SUBSEQUENT EVENTS**

On June 19, 2014, the New York State Department of Health approved an application by Peconic Landing to amend its Certificate of Authority. According to the application, Peconic Landing will increase its number of independent living units by forty-six (46) and increase its skilled nursing facility beds by sixteen (16).

The approval also included a change in Peconic Landing's Certificate of Authority to cease adult care facility services through Peconic Landing's CCRC Adult Care Facility and provide such services through a separate legal entity to be located on the Peconic Landing campus. The new adult care facility entity will consist of twenty six (26) enriched housing and sixteen (16) special needs assisted living residence beds. The new adult care facility will provide the required adult care facility services under a contract that will ensure priority placement to the Community's residents.

The anticipated construction start date was October 15, 2014 with an estimated completion date of January 15, 2016.

**5. COMPLIANCE WITH PRIOR REPORT ON  
EXAMINATION**

There were nine (9) comments and recommendations made in the prior report on examination as of December 31, 2008 (page numbers refer to the prior report on examination):

<b><u>ITEM NO.</u></b>	<b><u>PAGE NO.</u></b>
<p>1.     <u>Resident Contract - Meal Plan</u></p> <p>It is recommended that the Community comply with Section 4608 of the New York Public Health Law and refrain from implementing changes to the Community's contract (e.g., an alternative meal plan) with its residents prior to the Community receiving approval for such change to its resident care contract from the Superintendent of Insurance.</p> <p>The Community subsequently submitted the alternative meal plan to the New York State Departments of Health and Insurance on March 25, 2010. Such alternative meal plan was approved by both Departments on April 5, 2010.</p> <p><i>The Community has complied with this recommendation.</i></p>	<p>5</p>
<p>2.     <u>Management and Controls</u></p> <p>It is recommended that board members attend meetings consistently to set forth their views on relevant matters so that appropriate policy decisions may be reached by the board.</p> <p><i>The Community has not complied with this recommendation.</i></p> <p><i>A similar recommendation is included within this report on examination.</i></p>	<p>8</p>

**ITEM NO.****PAGE NO.**3. Brecknock Hall Foundation, Inc. (the "Foundation")

It is recommended that the Community submit its revised Stewardship Agreement with the Brecknock Hall Foundation, Inc. to the New York Department of Health for review as required by Part 901.10(d) (10 NYCRR 901.10(d)) of the Administrative Rules and Regulations of the New York Department of Health.

12

*The Community has not complied with this recommendation.*

*A similar recommendation is included within this report on examination.*

4. Occupancy Rates

It is recommended that the Community continue to strive to increase its occupancy rates in accordance with its actuarial consultant's recommendations, particularly with regard to its Enriched Housing Units.

13

*The Community has subsequently improved its occupancy rates, particularly with regard to its Enriched Housing Units, however, still remained below the occupancy goal for its Enriched Housing Units as determined by its actuarial consultant as of the date of this report on examination.*

5. Disaster Recovery Plan

It is recommended that the Community include specific transportation procedures for the evacuation of its residents within its Emergency Procedures Manual.

13

*The Community has not complied with this recommendation.*

*A similar recommendation is included within this report on examination.*

**ITEM NO.****PAGE NO.**6. Custodial Agreement

It is recommended that with regard to the Community's investments that are not held pursuant to a bond indenture, the Community establish custodial agreements with the financial institutions that safeguard its investments and include the above enumerated protective covenants and provisions in those agreements.

15

*The Community has not complied with this recommendation.*

*A similar recommendation is included within this report on examination.*

7. Minimum Liquid Assets Requirement

It is recommended that the Community comply with the quarterly testing and documentation requirements relative to the minimum liquid assets requirements of Part 360.6(a)(4) of Department Regulation No. 140.

16

*The Community has complied with this recommendation.*

8. Accounts Receivable

It is recommended that the Community comply with the requirements of Part 350.6(c)(7) of Department Regulation No. 140 and report on its actuarial balance sheet, as admitted assets, government receivables that are due within 365 days and non-government receivables that are due within 90 days of the examination date.

17

*The Community has not complied with this recommendation. A similar recommendation is included within this report on examination.*

9. Conflict of Interest

It is recommended that, as a prudent business practice, the Community follow its formal conflict of interest reporting procedures relative to its directors, officers, and employees.

17

*The Community has complied with this recommendation.*

## 6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A.        <u>Management and Controls</u></p> <p>It is recommended that board members attend board meetings consistently to set forth their views on relevant matters so that appropriate policy decisions may be reached by the board.</p> <p>A similar recommendation was included within the prior report on examination.</p>	<p>7</p>
<p>B.        <u>Long Term Lease and Maintenance and Services Agreements</u></p> <p>It is recommended that the Community comply with the requirements of Section 901.10(d) of the Administrative Rules and Regulations of the New York State Department of Health and submit its amended Long Term Lease Agreement to the New York State Department of Health for review and approval. Since the Maintenance and Services Agreement is a subsidiary agreement to the Long Term Lease Agreement, it is also recommended that the Community also submit the Maintenance and Service Agreement to the New York State Department of Health for review and approval.</p>	<p>11</p>
<p>C.        <u>Brecknock Hall Foundation, Inc. (the “Foundation”)</u></p> <p>It is recommended that Peconic Landing comply with the requirements of Section 715(a) of the New York Not-For-Profit Corporation Law and follow a prudent business practice by (i) establishing a written loan agreement each time it loans money, (ii) including a formalized repayment plan in the agreement, (iii) submitting the agreement to its board of directors for approval, and (iv) submitting the agreement to the New York State Department of Financial Services for review.</p>	<p>13</p>

<u>ITEM</u>	<u>PAGE NO.</u>
D. <u>Stewardship Agreement</u>	
i. It is recommended that the Community submit its revised Stewardship Agreement with the Brecknock Hall Foundation, Inc. to the New York State Department of Health for review, as required by Part 901.10(d) (10 NYCRR 901.10(d)) of the Administrative Rules and Regulations of the New York State Department of Health.	14
A similar recommendation was included within the prior report.	
ii. It is recommended that the Community comply with the requirements of Section 4606(9) of the New York State Public Health Law and include the required wording relative to the primary activities, interest and financial responsibilities between the Community and the Brecknock Hall Foundation Inc., as stated within the Brecknock Hall Stewardship Agreement within the Community's Disclosure Statement.	15
E. <u>Expense Allocation Procedure</u>	
It is recommended that the Community adopt a formal written expense allocation procedure for the purpose of allocating expenses among its affiliates.	16
F. <u>Occupancy Rates</u>	
The Community has subsequently improved its occupancy rates, particularly with regard to its Enriched Housing Units, however, still remained below the occupancy goal for its Enriched Housing Units as determined by its actuarial consultant as of the date of this report on examination.	17
G. <u>Disaster Recovery Plan</u>	
It is recommended that the Community include specific transportation procedures for the evacuation of its residents within its Emergency Procedures Manual.	17
A similar recommendation was included within the prior report on examination.	

<u>ITEM</u>	<u>PAGE NO.</u>
H. <u>Custodial Agreement</u>	
It is recommended, with regard to the Community’s investments that are not held pursuant to a bond indenture, that the Community establish custodial agreements with the financial institutions that safeguard its investments and include the above enumerated safeguards and controls in those agreements.	19
A similar recommendation was included within the prior report on examination.	
I. <u>Accounts Receivable</u>	
It is recommended that the Community comply with the requirements of Section 350.6(c)(7) of Insurance Regulation No. 140 and report on its actuarial balance sheet, as admitted assets, government agency receivables that are due within 365 days and non-government agency receivables that are due within 90 days of the determination date.	20
A similar recommendation was included within the prior report on examination.	
J. <u>Marketing Incentive</u>	
i. It is recommended that Peconic Landing comply with the “ <i>Instructions for Completing The Continuing Care Retirement Community (CCRC) Annual Statement Blank Calendar Year 2011</i> ” by reporting as prepaid expenses only amounts paid to creditors prior to the due date.	22
ii. It is also recommended that Peconic Landing report amounts due to the Community as a result of the recapture program as an accounts receivable item within its annual statement filings.	22
K. <u>Common Stock Investment</u>	
It is recommended that Peconic Landing comply with the “ <i>Instructions for Completing The Continuing Care Retirement Community (CCRC) Annual Statement Blank</i> ” by reporting as prepaid expenses only amounts paid to creditors prior to the due date, and report the 20 shares bought from Island’s End within the asset account, “Common stock” in the Community’s future filed annual statements.	23

Respectfully submitted,

\_\_\_\_\_/S/\_\_\_\_\_

Edouard Medina  
Associate Insurance Examiner

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

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

\_\_\_\_\_/S/\_\_\_\_\_

Edouard Medina

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_ 2014

APPOINTMENT NO. 30898

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:

**Edouard Medina**

as a proper person to examine the affairs of the

**Peconic Landing at Southold**

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

**CCRC**

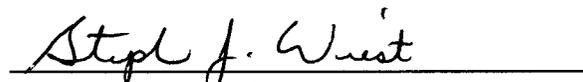
with such other information as he shall deem requisite.

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

this 26th day of October, 2012

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:

  
Stephen J. Wiest  
Deputy Bureau Chief  
Health Bureau

