

**REPORT ON EXAMINATION**

**OF**

**ACTIVE RETIREMENT COMMUNITY, INC.**

**D/B/A**

**JEFFERSON'S FERRY**

**AS OF**

**DECEMBER 31, 2007**

**DATE OF REPORT**

**NOVEMBER 17, 2008**

**EXAMINER**

**VICTOR ESTRADA**

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

David A. Paterson  
Governor

Eric R. Dinallo  
Superintendent

November 17, 2008

Honorable Eric R. Dinallo  
Superintendent of Insurance  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law and the New York Public Health Law and acting in accordance with the instructions contained in Appointment Number 22765, dated May 12, 2008, annexed hereto, I have made an examination as of December 31, 2007, into the condition and affairs of Active Retirement Community, Inc. (d/b/a Jefferson's Ferry), a not-for-profit continuing care retirement community licensed pursuant to the provisions of Article 46 of the New York Public Health Law, and submit the following report thereon.

Wherever the designation "the Community" appears herein, without qualification, it should be understood to indicate Jefferson's Ferry.

The examination was conducted at the office of the Community at One Jefferson Ferry Drive, South Setauket, NY.

As of December 31, 2005, the Community's required actuarial surplus, pursuant to Part 350.3 of New York Insurance Department Regulation 140 (11 NYCRR 350.3), as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$(11,206,694).

The Community is currently operating under a Plan of Restoration that was accepted by the New York Insurance Department on August 7, 2006.

### **1. SCOPE OF EXAMINATION**

The previous examination was conducted as of December 31, 2003. This examination covers the four year period from January 1, 2004 through December 31, 2007. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

Although, the examination encompassed the four year period ending December 31, 2007, the examination comprised a verification of assets and liabilities as of December 31, 2005 (the date of the most recent actuarial analysis made at the time of examination), in accordance with generally accepted actuarial accounting principles in compliance with the provisions of New York Insurance Department Regulation 140 {11 NYCRR 350}. A review was also made 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. All other aspects of the examination were reviewed as of December 31, 2007 or subsequent to such date.

A review was also made of the following items:

Community documents  
Growth of the Community  
Financial documents  
Board of directors meeting minutes  
Occupancy levels  
Plan to restore surplus

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.

## **2. EXECUTIVE SUMMARY**

- As of December 31, 2005, the Community's required actuarial surplus, pursuant to Part 350.3 of New York Insurance Department Regulation 140 (11 NYCRR 350.3), as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$(11,206,694).
- The Community is currently operating under a Plan of Restoration that was accepted by the New York Insurance Department on August 7, 2006.

## **3. DESCRIPTION OF COMMUNITY**

Jefferson's Ferry is a continuing care retirement community, defined under Article 46 of the New York State Public Health Law, and has received a Certificate of Authority from the New York State Continuing Care Retirement Community Council. The Community commenced operations in May 2001.

The Community's independent living section consists of 220 apartments and 28 cottages. Its health center has 60 private studio and one-bedroom apartments. There is also a skilled

nursing facility with 40 private rooms, plus 20 private skilled nursing rooms in a secured dementia area.

The Community operates as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. In exchange for an entrance fee and monthly maintenance charges, the Community provides lifetime residence and varying benefits for nursing care. The amount of the entrance fee and monthly maintenance charges are dependent upon the contract selected and the size of the residence being occupied.

The following is a description of the two contract options available to residents:

**A. Traditional Continuing Care Residency Agreement**

This contract provides for a refund of the first person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month that the resident occupied the living accommodation or a bed in the enriched housing or nursing care portion of the health center, less (i) any costs incurred by the Community at the specific request of the resident as set forth in an addendum to the agreement to the extent that those costs were not paid by the resident and (ii) any unpaid monthly service fees, and other charges as set forth on the monthly service fee statement and damage to the living accommodation. The Community will pay a refund of the second person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month that the resident occupied the living accommodation or a bed in the enriched housing or nursing care portion of the health center. Payment of a refund is made within thirty (30) days after a new resident pays the applicable entrance fee for the living unit,

but in no event more than one year after the resident terminates occupancy. When two residents contractually share a living accommodation, any refund of the entrance fee will only be paid at termination of the Contract.

**B. 90% Refundable Option First Person Entry Fee; Non Refundable Second Person Entry Fee**

This contract provides for a refund of the first person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month that the resident occupies the living accommodation or a bed in the enriched housing or nursing care portion of the health center, with the added provision that the refund shall not be less than 90% of the first person entrance fee; except if (i) any costs incurred by the Community at the specific request of the resident as set forth in an addendum to their agreement to the extent that those costs were not paid by the resident and (ii) any unpaid monthly service fees, and other charges as set forth on the monthly service fee statement, and damage to the living accommodation. The Community will pay a refund of the second person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month the resident occupied the living accommodation or a bed in the enriched housing or nursing care portion of the health center. Payment of a refund is made within thirty (30) days after a new resident pays the applicable entrance fee for the living unit, but in no event more than one year after the resident terminates residency. When two residents contractually share a living accommodation, any refund of the entrance fee will only be paid at termination of the Contract.

It is noted that a revised resident contract has been submitted to the Department of Health for approval. Such approval is pending the resolution of the propriety of aspects of the Community's underwriting procedures by the Department of Health.

A. Management

Pursuant to the Community's charter and by-laws, management of the Community is vested in a board of directors consisting of not less than six, nor more than twelve directors. As of the examination date, the board of directors was comprised of six members. The Community's board met at least once each quarter during the exam period in compliance with its by-laws.

The Community's directors as of December 31, 2007 were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
George F. Rice, Esq. Garden City, NY	Chairman, Spellman, Rice, Schure, Gibbons, McDonough, & Polizzi, LLP
Betsy Britton Setauket, NY	Member of Board of Directors, John T. Mather Hospital
Wayne Shattes Port Jefferson, NY	Vice President, John T. Mather Hospital
John Sini Setauket, NY	Treasurer, Sini & Reeves, LLP
John Fitzpatrick Port Jefferson, NY	Senior Vice President, UBS Financial Services
James O'Connor Port Jefferson, NY	Executive Director, St. Charles Hospital

A review of the attendance records at board of directors' meetings held during the period under examination revealed that meetings were generally well attended.

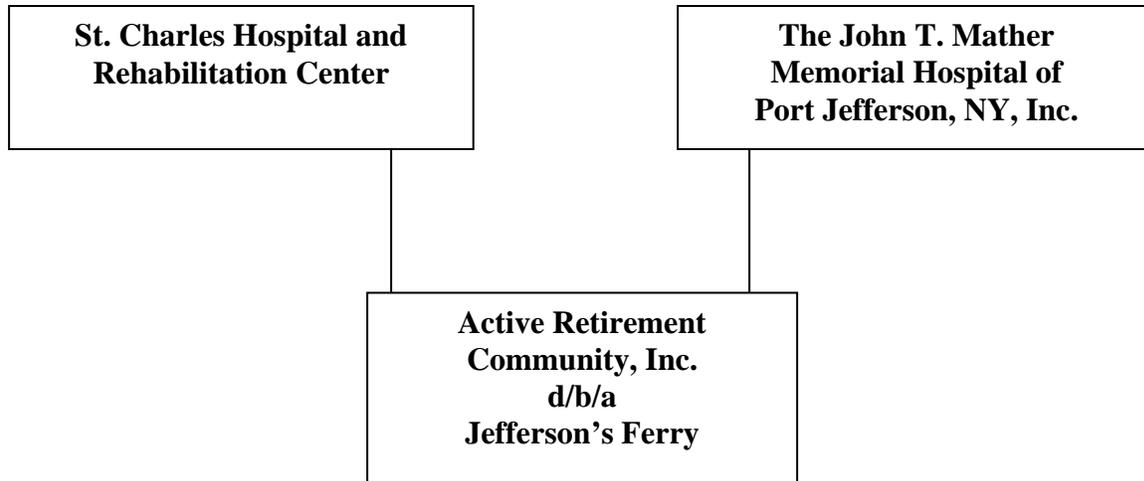
The principal officers of the Community as of December 31, 2007 were as follows:

<b><u>Officers</u></b>	<b><u>Title</u></b>
George F. Rice	Chairman of the Board
Betsy Britton	Vice-Chairman of the Board
Wayne Shattes	Secretary
John Sini	Treasurer

B. Holding Company System

The by-laws of the Community provide that one half of the Board of Directors is selected by John T. Mather Memorial Hospital of Port Jefferson, New York, Inc. (Mather) and the other half is selected by St. Charles Hospital and Rehabilitation Center (St. Charles) and, together with Mather, "the Hospitals".

The structure of the Community's holding company system as of the examination date is as follows:



The Community entered into a new management agreement with New Life Management, Inc. on November 15, 2004 for a period of five years, unless terminated earlier, in accordance with the contract provisions. Thereafter, the contract is automatically extended by one year, unless sixty days prior to such date, the Community provides a termination notice to New Life Management.

The management agreement provides for New Life Management, Inc. to administer and manage the day to day operations of the Community, including providing the necessary services to supervise the Community's employees in order to provide quality care and services to the residents and patients of the Community.

C. Occupancy Rates

The following reflects the occupancy rates at each year-end during the examination period for the Community's Independent Living Units:

<b>Period</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>Occupancy</b>	95%	98%	98%	99%

The following reflects the occupancy rates at each year-end during the examination period for the Community's Enriched Housing / Adult Care Units:

<b>Period</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>Occupancy</b>	93%	95%	93%	92%

The following reflects the occupancy rates at each year-end during the examination period for the Community's Skilled Nursing Facility:

<b>Period</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>Occupancy</b>	98%	97%	93%	94%

D. Accounts and Records

During the course of the examination, it was noted that the Plan's treatment of short-term investments was not in accordance with the annual statement instructions. A description of such treatment is as follows:

1. The Community incorrectly reported investments with maturity dates greater than one year, in its Bank of New York Operating Account, as being short-term investments.

The annual statement instructions define short term investments as follows:

“Short term investments are investments that at time of acquisition have one year or less remaining to maturity. Such amount may or may not be restricted assets. Provide detail on Schedule A.”

It is recommended that the Community comply with the annual statement instructions, and classify securities with maturity dates greater than one year as long-term investments in its financial statements filed with Superintendent of Insurance.

2. The Community follows Suffolk County Industrial Development Agency’s (SCIDA) guidelines relative to its investments. Section 5.10(a) – Investment of Funds and Accounts - of SCIDA’s guidelines for bonds, states in part;

“...that the amount on deposit in the Debt Service Reserve Fund shall be invested in Government Obligations, Agency Obligations or Investment Agreements, which (i) at least 30% of the amount invested shall mature or be redeemable at the option of the Holder not later than three years from the date of purchase; (ii) no investment shall mature or be subject to redemption at the option of the Holder later than five years from the date of purchase; and provided further that all moneys in the Operating Reserve Fund shall be invested in Investment Securities maturing or redeemable at the option of the Holder not later than twelve (12) months from the date of purchase.”

3. The Community did not adhere to Section 5.10(a)(ii) of the Suffolk County Industrial Development Agency guidelines for their investments in that the investments in the operating reserve fund had maturity dates which were greater than twelve months.

It is recommended that the Community comply with Section 5.10(a)(ii) of SCIDA’s guidelines and maintain investments in its operating reserve fund which mature or are redeemable within the time frames indicated in such guidelines.

E. Escrow Agreement

Section 4622(3)(a) of the New York Public Health Law states in part:

“As a condition to receiving the commissioner’s authorization under this section, an operator shall establish a government insured interest-bearing account, which earns interest at a rate which is consistent with prevailing interest rates, and enter into an escrow agreement with a New York bank, New York savings and loan association or New York trust company for the deposit of any priority reservation fees collected by the operator pursuant to this section, which escrow funds shall be subject to release as provided for in this section.”

The Community, at the time of the examination, did not have an escrow agreement or an escrow account in which to deposit priority reservation fees.

It is recommended that the Community comply with Section 4622(3)(a) of the New York Public Health Law and maintain the appropriate escrow account relative to priority reservation deposits.

### 3. FINANCIAL STATEMENTS

#### A. Balance Sheet

The following shows the assets, liabilities and surplus as determined by this examination as of December 31, 2005. It is the same as the revised actuarial balance sheet filed by the Community per the Plan of Restoration, presented on a statutory actuarial basis, pursuant to Part 350 of New York Insurance Department Regulation 140 (11 NYCRR 350).

#### Assets

Cash and investable assets	\$ 27,964,070
Property, plant and equipment	95,035,032
Deferred financing costs	2,168,144
Deferred marketing costs	<u>914,414</u>
Total assets	<u>\$126,081,660</u>

#### Liabilities

Long-term debt and short-term debt	\$ 50,185,000
Required reserve liability	<u>87,103,354</u>
Total liabilities	<u>\$137,288,354</u>

#### Net Surplus

Net actuarial surplus	<u>(11,206,694)</u>
Total liabilities and net actuarial surplus	<u>\$126,081,660</u>

It should be noted that the net 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.

As of December 31, 2005, the Community's required actuarial surplus, pursuant to Part 350.3 of New York Insurance Department Regulation 140 (11 NYCRR 350.3), as determined using generally accepted actuarial standards, and applying statutory requirements, was impaired in the amount of \$(11,206,694). The Community is currently operating under a Plan of Restoration that was accepted by the New York Insurance Department on August 7, 2006.

B. Statement of Revenue, Expenses and Actuarial Surplus

The statement of revenue and expenses is presented on a GAAP basis for the period January 1, 2004 through December 31, 2005.

Revenues

Resident fees	\$18,323,009
Other revenue from residents	14,264,491
Earned entrance fees	3,026,999
Interest and dividend income	1,601,107
Net realized (losses)	<u>(21,563)</u>

Total revenues		<u>\$37,194,043</u>
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Expenses

Interest expense	\$ 7,431,237
Facility expenses	6,796,569
Dining expenses	5,182,694
Health expenses	9,142,397
Administration expenses	4,822,009
Depreciation and amortization	6,221,971
Real estate taxes	<u>1,264,456</u>

Total expenses		<u>40,861,333</u>
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Net (loss)		<u>\$ (3,667,290)</u>
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Change in actuarial surplus

Actuarial surplus increased \$9,023,306 during the examination period, January 1, 2004 through December 31, 2005, detailed as follows:

Actuarial surplus as of December 31, 2003, per report on examination			\$(20,230,000)
	<u>Gain in Surplus</u>	<u>Loss in Surplus</u>	
GAAP basis Net (Loss)		\$(3,667,290)	
Aggregate write-ins for gains and losses		(441,872)	
Statutory adjustment	<u>\$13,132,468</u>	_____	
Total gains and losses	<u>\$13,132,468</u>	<u>\$(4,109,162)</u>	
Net increase in surplus			<u>9,023,306</u>
Actuarial surplus as of December 31, 2005, per report on examination			<u>\$(11,206,694)</u>

#### **4. CONCLUSION**

As of December 31, 2005, the Community's required actuarial surplus, pursuant to Part 350.3 of New York Insurance Department Regulation 140 (11 NYCRR 350.3), as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$(11,206,694).

The Community is currently operating under a Plan of Restoration that was accepted by the New York Insurance Department on August 7, 2006.

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

The prior report on examination contained ten comments and recommendations as follows (page numbers refer to the prior report):

<b><u>ITEM NO.</u></b>		<b><u>PAGE NO.</u></b>
	<b><u>Description of Community</u></b>	
1.	It is recommended that the Community revises its Contracts to comply with the requirements of paragraph fifteen (15) of Section 4608 of the New York Public Health Law.  The Community has complied with this recommendation. However, underwriting procedures relative to a new resident contract filing are being reviewed by the Department of Health.	7
2.	It is recommended that the Community complies with Section 4606 of the New York Public Health Law, and include the wording of paragraph twelve (12) in its initial Disclosure Statement.  The Community has complied with this recommendation.	8

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3. It is recommended that the board's Secretary sign all board minutes. 9

The Plan has complied with this recommendation.

4. It is recommended that the attendance of all board members' excused absences be documented within the minutes of the board of directors' meetings. 9

The Community has complied with this recommendation.

Conflict of Interest

5. It is recommended that the Community have a conflict of interest/annual statement disclosure forms completed on an annual basis for its directors, officers, appointees with administrative responsibilities, employees, and volunteers. 13

The Community has complied with this recommendation.

Record Retention

6. It is recommended that the Community complies with Department Regulation 152 {11 NYCRR 243}, as well as its own record retention policy in regard to maintaining pertinent information such as board of director minutes and conflict of interest/annual disclosure forms. 16

The Community has complied with this recommendation.

Accounts and Records

7. It is recommended that the Community adheres to the definition of a short-term investment, and classify securities with maturity dates greater than one year as long-term investments in its filed financial statements. 17

The Community has not complied with this recommendation. A similar recommendation is contained in this report.

<u>ITEM NO.</u>		<u>PAGE NO.</u>
8.	<p>It is recommended that the Community complies with Section 5.10(a)(ii) of the SCIDA's guidelines and not have investments with maturity or redemption dates greater than twelve months from the date of purchase.</p> <p>The Community has not complied with this recommendation. A similar recommendation is contained in this report.</p>	18
9.	<p>It is recommended that the review of the investment managers be formally documented so that all members of the board are kept abreast of the investment manager's investment performance and the investment manager's quality of service, communication with the board and other important factors. Additionally, it is recommended that the board minutes reflect who has the responsibility of reviewing the investment managers annually.</p> <p>The Community has complied with this recommendation.</p>	19
10.	<p>It is recommended that the Community documents any enactment or testing of the Global Computer Systems disaster recovery plan to determine that it is working effectively.</p> <p>The Community has complied with this recommendation.</p>	19

## 6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A.            <u>Surplus</u></p> <p>As of December 31, 2005, the Community's required actuarial surplus, pursuant to Part 350.3 of New York Insurance Department Regulation 140 (11 NYCRR 350.3), as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$(11, 206,694).</p> <p>The Community is currently operating under a Plan of Restoration that was accepted by the New York Insurance Department on August 7, 2006.</p>	<p>2,3,12,15</p>
<p>B.            <u>Description of Community</u></p> <p>It is noted that a revised resident contract has been submitted to the Department of Health for approval. Such approval is pending the resolution of the propriety of aspects of the Community's underwriting procedures by the Department of Health.</p>	<p>6</p>
<p>C.            <u>Accounts and Records</u></p> <p>i.            It is recommended that the Community comply with the annual statement instructions, and classify securities with maturity dates greater than one year as long-term investments in its filed financial statements to the Superintendent of Insurance.</p> <p>ii.           It is recommended that the Community comply with Section 5.10(a)(ii) of SCIDA's guidelines and maintain investments in its operating reserve fund which mature or are redeemable within the time frames indicated in such guidelines.</p>	<p>10</p> <p>10</p>
<p>D.            <u>Escrow Agreement</u></p> <p>It is recommended that the Community comply with Section 4622(3)(a) of the New York Public Health Law and maintain the appropriate escrow account relative to priority reservation deposits.</p>	<p>11</p>

Appointment No. 22765

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**

I, **Eric R. Dinallo**, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

**Victor Estrada**

as a proper person to examine into the affairs of the

**Active Retirement Community, Inc.**  
d/b/a **Jefferson's Ferry**

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

**Continuing Care Retirement Community**

with such information as he shall deem requisite.

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

this 12<sup>th</sup> day of May 2008



Eric R. Dinallo  
Superintendent of Insurance

