

REPORT ON EXAMINATION

OF

EPISCOPAL CHURCH HOME AND AFFILIATES LIFE CARE COMMUNITY, INC.

d/b/a CANTERBURY WOODS

AS OF

DECEMBER 31, 2003

DATE OF REPORT

APRIL 28, 2005

EXAMINER

BRUCE BOROFSKY

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

George E. Pataki
Governor

Howard Mills
Superintendent

Honorable Howard Mills
Superintendent of Insurance
Albany, NY 12257

April 25, 2005

Sir:

Pursuant to the provisions of the New York Insurance Law and the New York Public Health Law and acting in accordance with the instructions contained in Appointment Number 22334 dated March 11, 2005 annexed hereto, I have made an examination into the condition and affairs of the Episcopal Church Home and Affiliates Life Care Community, Inc d/b/a Canterbury Woods, a not-for-profit Continuing Care Retirement Community authorized pursuant to the provisions of Article 46 of the New York State Public Health Law.

Wherever the designation "the Community" appears herein, without qualification, it should be understood to indicate the Episcopal Church Home and Affiliates Life Care Community, Inc. d/b/a Canterbury Woods. The examination took place at the site of the Community at 705 Renaissance Drive, Williamsville, NY.

1. SCOPE OF THE EXAMINATION

The Community was formed on December 26, 1995 and began operating on June 1, 1999. This examination covered the period from January 1, 2002 through December 31, 2003. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

Representatives of the New York Insurance Department and the New York Department of Health conducted a site survey of the Community's facility on October 20, 2004 pursuant to Section 4610 of the New York Public Health Law.

The examination comprised a verification of the assets and liabilities of the Community as of December 31, 2003 in accordance with Generally Accepted Accounting Principles (GAAP), as modified by the New York Insurance Department pursuant to New York Insurance Department Regulation 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. A review was also made of the following items:

- Community documents
- Growth of the Community
- Financial documents
- Board of Directors meeting minutes

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

The Community's required actuarial surplus as determined using generally accepted actuarial standards and applying statutory requirements was impaired in the amount of \$6,344,639. The Community is currently operating under a Plan of Restoration (Plan) that was accepted by the New York Insurance Department on August 24, 2004. That Plan of Restoration assumes certain occupancy levels and establishes future fee increases over a period of time in order for the Community to resolve its actuarial surplus impairment. The projected date for the removal of the impairment under the current Plan is calendar year 2008.

Additional examination findings are described in the body of the report.

3. DESCRIPTION OF THE COMMUNITY

Canterbury Woods is a Continuing Care Retirement Community as 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 is a New York not-for-profit organization which was formed to build, own, and operate a continuing care retirement community which consists of two hundred three (203) independent living units, and an eighty (80) bed health center consisting of thirty-two (32) enriched housing units and forty-eight (48) skilled nursing beds. The Community is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

The Community is currently in the process of developing Phase II of the Community. Phase II, to be named Lexington Village at Canterbury Woods, will consist of forty (40) cottage-style homes and a central clubhouse. Development of Phase II was formally approved by the New York State Continuing Care Retirement Community Council on February 3, 2003.

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

Entrance fees are due in two installments. Ten percent of the entrance fee is due when the life care contract is signed, while the remainder is to be paid upon the earlier of (1) the date the resident occupies the facility or (2) 60 days from the date the contract is executed.

Entrance fees include a residential component and a life care component. During the first 90 days after the resident pays the entrance fee in full, all amounts collected by the Community are fully refundable if the resident terminates the contract for any reason. At the end of the 90-day period, the entrance fee refund will be reduced by a 4% processing fee. For each of the next three months, the refund will be reduced by 2% per month. At the end of these three months, the remaining 90% of the residential component of the entrance fee will be refundable for the duration of the contract term. The refund of the life care component will be further reduced by 2% per month for each additional month of residency until the 51st month, after which there will be no refund.

A. Management

Pursuant to the Community's charter and bylaws, management of the Community is to be vested in a board of directors consisting of not less than three (3) and not more than twenty-one (21) Regular Directors. As of the examination date, the board of trustees was comprised of nine (9) Directors. The board is required, at minimum, to meet four times per year. An Annual Meeting is to be held every April and at least three other

Regular meetings are to be held throughout the year. The Annual Meeting is open to all residents. The Community may hold other special meetings as deemed necessary. The members of the board of directors as of December 31, 2003 were as follows:

<u>Name</u>	<u>Position</u>
The Reverend Judith D. Burrows Williamsville, NY	Priest, St. Paul's Episcopal Church
Rabbi Mordechai Friedfertig Williamsville, NY	Rabbi, Kehillat Ohr Tzion
Howard F. Gondree Buffalo, NY	Director / Treasurer Episcopal Diocese of WNY
Reid R Heffner, Jr. MD Buffalo, NY	Physician
Thomas D. Lunt Orchard Park, NY	Financial Consultant, Smith Barney
Steven W. McGranka Buffalo, NY	Retired
H. Ernst Montgomery, II Buffalo, NY	Marketing Director, D. B. Brown & Associates
Anthony J. Renaldo Williamsville, NY	Senior Partner, Renaldo, Myers and Palumbo
The Reverend Charles W. Whitmore Orchard Park, NY	Rector, St. Mark's Episcopal Church

The minutes of all meetings of the Board of Directors were reviewed. The following was noted:

Article IV, paragraph 1 of the Community's by-laws states the following:

“The Annual Meeting of the Board of Directors shall be held in April each year. At least three other Regular meetings of the Board shall be held in each year.”

During calendar year 2003, only three such meetings were held.

It is recommended that the Community comply with Article IV, paragraph 1 of its by-laws and hold the appropriate number of board meetings each year.

Article IV, paragraph 3 of the Community's by-laws states in part,

“ A quorum for any meeting of the Board of Directors shall consist of not less than a majority of the entire board...”

It is noted that on two occasions, the Community held board meetings, which did not consist of a quorum.

It is recommended that the Community comply with Article IV, paragraph 3 of its by-laws and require a quorum for all board meetings.

Article III, paragraph 7 of the Community's by-laws states the following:

“Board members who are absent from three (3) consecutive Board meetings without justifiable cause, shall be automatically removed from Board membership.”

In four cases, the Community failed to take the appropriate steps to remove directors who failed to attend three consecutive board meetings.

It is recommended that the Community comply with Article III, paragraph 7 of its by-laws and remove those directors who fail to attend three consecutive meetings.

Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the Community. Six individuals, Rev. Judith Burrows, Rabbi Mordechai Friedfertig, Howard Gondree, Reid Heffner, Jr. MD, Thomas Lunt, and Steven McGanka failed to attend at least half of the meetings held. It is essential that

board members attend meetings consistently and set forth their views on relevant matters so that the board may reach appropriate decisions. Individuals who fail to attend at least one-half of the regular meetings do not fulfill such criteria.

It is recommended that the members of the board of directors attend at least one-half of the regular board meetings. Board members who are unable or unwilling to attend meetings consistently, should resign or be replaced. This recommendation was also made in the previous report.

The principal officers of the Community, as of December 31, 2003, were as follows:

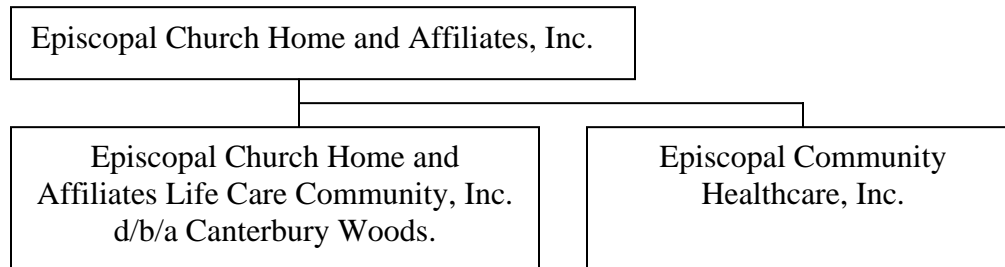
<u>Name</u>	<u>Title</u>
Edward C. Weeks	Chief Executive Officer
James Juliano	Chief Financial Officer
Howard F. Gondtree	Treasurer

The Community has only \$50,000 in fidelity insurance coverage for dishonesty by its officers and employees. Such an amount may not be sufficient in the event of a misappropriation.

It is recommended that the Community maintain a minimum of \$300,000 in fidelity insurance coverage covering officer or employee dishonesty.

B. Holding Company System

The structure of the Holding Company, as of the examination date, is as follows:



The Community is a Type B corporation as defined by Sections 201 and 601(a) of the Not-for-Profit Corporation Law. The sole member of the Community is Episcopal Church Home and Affiliates, Inc. (ECH&A). The Community is controlled by ECH&A through by-law requirements. ECH&A must approve any amendments to the Community's by-laws or articles of incorporation.

On April 6, 1999, a management agreement was entered into between the Community and Episcopal Community Health Care, Inc. (Manager). Under this agreement, the Community retained, appointed and engaged the Manager to provide oversight and management services. In May, 2001, the responsibilities of the Manager were turned over to the Parent, though the Management Agreement was never changed to reflect that fact. All other components of the agreement were unchanged. The following is a summary of the services:

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1. Oversight Services:

- a. Operations/Administration – provide oversight of Community operations including attendance at Board of Directors’ meetings, review and approve all pre-opening plans, policy and procedures manuals, and advise and assist in the evaluation and acquisition of technology.
- b. Continuous Quality Improvement (CQI)– review and approve all activities and information related to the CQI process, counsel and participate in quality improvement programs as frequently as possible.

- c. Human Resources – assist in the recruitment process for department managers, provide technical expertise with respect to developing wage and salary grade scales and formulate staff benefit plans.
- d. Finance and Accounting – review and approve all budgets and long range financial projections, coordinate the annual independent financial audit, provide Management Information Systems oversight and on-site staff training.
- e. Marketing and Public Relations – review and approve all marketing plans and public relations initiatives.

2. Management Services:

- a. Operations/Administration – enforce all policies and rules that were established regarding the operation of the Community, meet with the Residents' Association on a regular basis to hear ideas, update residents, discuss operating and/or policy changes and respond to suggestions.
- b. Continuous Quality Improvement – provide CQI training to all employees of the Community.
- c. Human Resources – responsible for the recruitment, hiring, training, supervision and termination of all personnel necessary for the efficient operation of the Community. Also, recommend and institute appropriate employee benefits.
- d. Finance and Accounting – prepare and deliver monthly unaudited financial statements containing a balance sheet, statement of cash flows, a statement of revenues and expenses, together with variance analyses and departmental reports, all within thirty (30) days after the close of each calendar month. Prepare all financial reports, statements of affairs or records required by any federal, state or local government. Prepare a financial projection for a ten (10) year period, accompanied by assumptions upon which the projection is based.
- e. Marketing and Public Relations – develop marketing objectives and plans to maintain satisfactory levels of occupancy, and establish marketing policies and procedures to be followed by the staff of the marketing department.
- f. Health Center, Assisted Living and Wellness Program – develop forms, systems and programs to exceed state and federal requirements and seek innovative methods to continually improve the level of clinical care.
- g. Dining Services – review all dining budgets, policies and procedures. Provide periodic inspections and reviews on environmental and sanitation factors as well as culinary quality and presentation.
- h. Laundry, Housekeeping, Maintenance and Security – supervise a program of regular maintenance and repair in accordance with state and local codes, including, but not limited to, cleaning, painting, decorating, plumbing, carpentry, grounds care and such other maintenance and repair work as may be necessary.
- i. Cultural Arts and Community Programs – maintain a recreation and cultural arts program for residents of the Community.
- j. Capital Expenditures – recommend capital improvements, additions or expenditures to be undertaken by the Community.

- k. Insurance – arrange for appropriate types, categories and amounts of insurance including, but not limited to, insurance required by the Erie County Industrial Development Agency.
- l. Purchasing – establish purchasing standards for supplies and food necessary for the operation of the Community.

It is noted that the Management Agreement between Canterbury Woods and its Manager expired on June 1, 2004. Since that time, no new agreement has been initiated although Episcopal Community Health Care, Inc. has continued to provide the services enumerated above to the Community.

It is recommended that the Community maintain a signed agreement with its provider of management services.

C. Occupancy rates

The following reflects the occupancy rates at each year-end 2002 and 2003 for each of the facilities within the Community:

	<u>2002</u>	<u>2003</u>
Independent Living units	92.6%	92.1%
Enhanced Living units	75.0%	84.4%
Skilled Nursing facility	100.0%	97.9%

D. Investments

While the Asset Investment Committee has established an investment policy for the Community's escrow funds, such policy has not been set forth in a formal document. Additionally, the Community's board of directors has not approved such investment policy. Such formal documentation of investment policy can help the Community ensure consistency in its investment approach.

It is recommended that the Community's board of directors approve and set forth its investment policy in a formal document.

The Community does not utilize a custodial agreement to safeguard securities. This Department regards custodial agreements as indicative of prudent business practices and recommends such agreements contain the following protective covenants and provisions:

- The bank shall have in force, for its own protection, Bankers Blanket Bond Insurance of the broadest form available for commercial banks and will continue to maintain such insurance. The bank will give the Community 60 days written notice of any material change in the form or amount of such insurance or termination of this coverage.
- The bank will at all times give the securities held by the bank thereunder the same care the bank gives its own property of a similar nature.
- The bank shall furnish the Community (at least quarterly) with a list of such securities showing a complete description of each issue, which shall include the number of shares or par value of bonds so held at the end of each quarter.
- The bank shall maintain records sufficient to verify information the Community is required to report in the Annual Statement blanks of the Insurance Department.
- The bank shall furnish the Community with the appropriate affidavits in an acceptable form in order for the securities referred to in such affidavits to be recognized as admitted assets of the Community.
- Access shall be during the bank's regular hours. Those persons who shall be entitled to examine, on the bank's premises, securities held by the bank and the bank's records related to those securities, shall be specified. An authorized officer shall furnish the bank with written instructions to that effect.
- Written instructions hereunder shall be signed by any two of the Community's authorized officers specified in a separate list for this purpose which will be furnished to the bank from time to time signed by the treasurer or an equivalent officer and certified under the corporate seal by the secretary or an assistant secretary.
- In connection with any situation involving registration of securities in the name of a nominee of a bank custodian, the custodian agreement should empower the bank to take such action.

- The agreement should have a provision that would give the Community the opportunity to secure the most recent report on the review of the custodian's system of internal control, pertaining to custodial record keeping, issued by internal or independent auditors.

It is recommended that the Community establish custodial agreements with the financial institutions that safeguard its investments and include the enumerated protective covenants and provisions in those agreements.

This recommendation was also in the previous report on examination.

E. Information Systems

During review of the facility's Information Systems, it was noted that, while the facility does update all of its system-protective security programs, it does not do so on a formal schedule. The failure to maintain such a formal schedule to update its security systems could result in program destruction or loss of security.

It is recommended that the Community establish and implement a formal schedule to update its computer software security programs.

4. FINANCIAL STATEMENTS

A. Balance sheet

The following shows the assets, liabilities and surplus as determined by this examination as of December 31, 2003. It is the same as the revised actuarial balance sheet filed by the Community on August 10, 2004 per the Plan of Restoration, presented on a statutory accounting basis, pursuant to New York Insurance Department Regulation 140 (11 NYCRR 350) (See item 5, herein for further explanation):

<u>Assets</u>	
Cash and investable assets	\$ 23,018,954
Accounts receivable and prepaid expenses	535,539
Real estate related to the community	
Land	4,185,308
Building	38,970,537
Furniture and equipment	15,622,067
Deferred financing costs	1,563,478
Deferred marketing costs	959,993
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Total assets	\$ 84,855,876
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<u>Liabilities</u>	
IDA bonds	\$ 42,090,000
Actuarial reserve	49,110,516
Total liabilities	\$ 91,200,516
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Net surplus	(6,344,639)
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Total liabilities and net surplus	\$ 84,855,876
Ratio of net surplus to total liabilities	(7.0%)
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The balance sheet does not reconcile due to a rounding adjustment.

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.

The Community's required actuarial surplus liability, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$6,344,639. The Community is currently operating under a Plan of Restoration that was accepted by the New York Insurance Department on August 24, 2004.

B. Statement of revenue, expenses and surplus

The statement of revenue and expenses is presented on a GAAP basis for the period January 1, 2002 through December 31, 2003.

Revenues, Gains and other Support

Monthly maintenance fees	\$ 12,575,015
Other revenue from residents	348,599
Earned entrance fees	2,278,582
Patient revenues from nonresidents	7,293,976
Interest and dividend income	1,000,411
Non-operating income	333,776
Total Revenue	<u>\$ 23,830,359</u>

Operating Expenses

Interest expense	\$ 5,000,670
Facility expenses	3,058,429
Dining	4,013,413
Health expenses	4,176,101
Administrative expenses	4,864,366
Depreciation and amortization	7,370,914
Change in provision for uncollectible accounts	54,269
Real estate taxes	1,091,206
NYS Health Facilities Assessment	293,590
Other expenses	44,066
Total expenses	<u>29,967,024</u>

Net Income	<u>\$ (6,136,665)</u>
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C. Changes in actuarial surplus

Surplus decreased \$2,258,960 during the examination period, January 1, 2002 through December 31, 2003, detailed as follows:

Surplus per report on examination as of December 31, 2001			\$(4,085,679)
	<u>Gains in Net Worth</u>	<u>Losses in Net Worth</u>	
GAAP basis net income/(loss)		\$(6,136,665)	
Restricted Retained Earnings	\$ 6,564		
Net unrealized Capital Loss		(352,508)	
Statutory adjustment	4,223,649		
Subtotal			<u>(2,258,960)</u>
Surplus per report on examination as of December 31, 2003			<u><u>\$(6,344,639)</u></u>

5. REQUIRED ACTUARIAL SURPLUS

The examination actuarial surplus of \$(6,344,639) is the same as the amount reported by the Community in its revised actuarial filing dated August 10, 2004.

The Community's required actuarial surplus as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$6,344,639 as of December 31, 2003. The Community is currently operating under a Plan of Restoration to resolve its actuarial surplus impairment that was accepted by the New York Insurance Department on August 24, 2004.

It is recommended that the Community continue to operate under its Plan of Restoration as required by New York Insurance Department Regulation 140 (11 NYCRR 350.8(a)).

6. MARKET CONDUCT REVIEW

The examination included a market conduct review focusing on the following major areas:

- a) Sales and advertising,
- b) Disclosure statement,
- c) Residency agreement, and
- d) Residents handbook.

A. Residency Agreement

Section IX, paragraph (e) of the Community's Residency Agreement stipulates the following:

“Resident agrees... to maintain at Resident's cost Medicare Part A, Medicare Part B (or equivalent)... and to furnish Sponsor evidence of coverage in accordance with a monitoring system employed by Sponsor.”

The agreement goes on to establish the right of the Community to acquire Medicare A and B or equivalent health coverage on behalf of the resident and charge the resident for such coverage in the event the coverage is not maintained.

The Community does not test for such Medicare A and B or equivalent health care coverage on an annual basis. Instead, the Community assumes such coverage is maintained. This process may not allow for the Community to be reimbursed for at least, initial claims in the event such coverage has been allowed to lapse.

It is recommended that the Community require residents to comply with the Residency Agreement and submit annual proof of Medicare A and B or equivalent health care coverage.

7. **SUMMARY OF PREVIOUS COMMENTS AND RECOMMENDATIONS**

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. The Community's required reserve liability, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$4,085,679. Subsequent to the examination date, the Community filed a Plan of Restoration that was accepted by the New York Insurance Department on January 10, 2003.</p> <p>The Community is continuing to operate under its Plan of Restoration.</p>	<p>1, 13, 16</p>
<p>B. It is recommended that the members of the board of directors attend at least one-half of the regular board meetings. Board members, who are unable or unwilling to attend meetings consistently, should resign or be replaced.</p> <p>A similar recommendation was made within this report on examination.</p>	<p>5</p>
<p>C. It is recommended that the Community include the enumerated protective covenants and provisions in its custodial agreements.</p> <p>A similar recommendation was made within this report on examination.</p>	<p>11</p>
<p>D. It is recommended that the Community develop and maintain both a disaster recovery and a business continuity plan.</p> <p>The Community has complied with this recommendation.</p>	<p>11</p>

8. SUMMARY OF COMMENTS AND RECOMMENDATIONS

ITEM	PAGE NO.
A. <u>Management</u>	
i. It is recommended that the Community comply with Article IV, paragraph 1 of its by-laws and hold the appropriate number of board meetings each year.	6
ii. It is recommended that the Community comply with Article IV, paragraph 3 of its by-laws and require a quorum for all board meetings.	6
iii. It is recommended that the Community comply with Article III, paragraph 7 of its by-laws and remove those directors who fail to attend three consecutive meetings.	6
iv. It is recommended that the members of the board of directors attend at least one-half of the regular board meetings. Board members who are unable or unwilling to attend meetings consistently, should resign or be replaced.	7
It is noted that a similar recommendation was made in the previous report on examination.	
v. It is recommended that the Community maintain a minimum of \$300,000 in fidelity insurance coverage covering officer or employee dishonesty.	7
B. <u>Holding company system</u>	
i. It is recommended that the Community maintain a signed agreement with its provider of management services.	10
C. <u>Investments</u>	
i. It is recommended that the Community's boards of directors approve and set forth its investment policy in a formal document.	11
ii. It is recommended that the Community establish custodial agreements with the financial institutions that safeguard its investments and include the enumerated protective covenants and provisions in those agreements.	12

It is noted that a similar recommendation was made in the previous report on examination.

- D. Information systems
- i. It is recommended that the Community establish and implement a formal schedule to update its computer software security programs. 12
- E. Required actuarial surplus
- i. It is recommended that the Community continue to operate under its Plan of Restoration as required by New York Insurance Department Regulation 140 (11 NYCRR 350.8(a)). 16
- F. Residency Agreement
- i. It is recommended that the Community require residents to comply with the Residency Agreement and submit annual proof of Medicare A and B or equivalent health care coverage. 17

Appointment No. 22334

**STATE OF NEW YORK
INSURANCE DEPARTMENT**

I, **Howard Mills**, Acting Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

Bruce Borofsky

as a proper person to examine into the affairs of the

**Episcopal Church Home and Affiliates Life Care Community, Inc.
d/b/a Canterbury Woods**

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 11 day of March 2005



Howard Mills
Acting Superintendent of Insurance

