

REPORT ON EXAMINATION

OF

GLEN ARDEN, INC.

AS OF

DECEMBER 31, 2005

DATE OF REPORT

MAY 29, 2008

EXAMINER

BARBARA FINNERTY, ARe

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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 of Insurance

May 29, 2008

Honorable Eric R. Dinallo
Superintendent of Insurance
Albany, NY 12257

Sir:

Pursuant to the requirements of the New York Insurance Law and in compliance with the instructions contained in Appointment Number 22590, dated February 12, 2007 annexed hereto, I have made an examination of the condition and affairs of Glen Arden, Inc. as of December 31, 2005 and submit the following report thereon. Glen Arden, Inc. is a Continuing Care Retirement Community licensed pursuant to the provisions of Article 46 of the Public Health Law (PHL).

The examination was conducted at the home office of Glen Arden, Inc. at 214 Harriman Drive, Goshen, New York 10924.

Wherever the designations "the Community" or "Glen Arden" appear herein, without qualification, they should be understood to indicate Glen Arden, Inc. Wherever the designations "Elant" or "the affiliate" appear herein, without qualification, they should be understood to mean Elant, Inc., the sole corporate member of Glen Arden, Inc.

As a result of this examination, which incorporated a review of the Community's filed actuarial balance sheet as December 31, 2005, the Community's minimum surplus requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$4,318,000.

1. SCOPE OF THE EXAMINATION

The previous examination was conducted as of December 31, 2002. This examination covered the three year period from January 1, 2003 through December 31, 2005. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets, liabilities, and change in surplus as of December 31, 2005 in accordance with Generally Accepted Accounting Principles (GAAP), as modified by the Department pursuant to 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. A review was also made of the following items:

- Community documents
- Compliance with the By-laws
- Contracts, agreements, and forms filing
- Rates and marketing
- 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 that are deemed to require explanation or description.

2. **EXECUTIVE SUMMARY**

- As a result of this examination, Glen Arden's minimum surplus requirement, as determined using generally accepted actuarial standards and applying statutory requirements was impaired in the amount of \$4,318,000 as of December 31, 2005. The Community is operating under a plan to restore its minimum surplus, as required by New York Insurance Department Regulation 140 (11 NYCRR 350.8(a)).
- The Community sold a 10.447 acre parcel of land to Lifestyle Concepts, Inc., a for-profit affiliate and wholly owned subsidiary of the Community's parent, Elant, Inc. for \$900,000. Such sale price was based on a six-year old valuation. In this regard, such sale was made without the prior approval of the Superintendent of Insurance as required by Section 1505(c) of the New York Insurance Law. It is noted that the Community has submitted an application for expansion. As part of the proposed expansion, such parcel of land would be returned to the Community at the original sales price of \$900,000. Further details relative to this item are included at section 7C of this report on examination (pgs. 25-26).
- The Community, as of December 31, 2007, had made advances and loans to its parent, Elant, Inc., in the aggregate amount of approximately \$3,200,000 without notification to or by approval of the New York Insurance Department and the New York Department of Health. Glen Arden, Inc. has agreed not to make any additional loans and/or cash advances to Elant, Inc or any of its affiliates without the prior written approval of the New York Insurance Department. Further details relative to this item are included at section 7B of this report on examination (pgs. 23-25).

3. **DESCRIPTION OF THE COMMUNITY**

Glen Arden Inc. is a Continuing Care Retirement Community (CCRC), defined under Article 46 of the New York State Public Health Law. The Community received a Certificate of Authority from the New York State Continuing Care Retirement Community Council, effective September 23, 1994, and a final Certificate of Authority from the New York State Department of Health on December 19, 1994. The Community commenced operations on June 1, 1996. Interlocking directorates exist within Glen Arden and some members of its parent holding company system.

Glen Arden, Inc. is a nonprofit, tax-exempt corporation under 501(c)(3) of the Internal Revenue Code that operates a continuing care retirement community. The community offers a 40 bed skilled nursing center for residents who need full time nursing care, a reconfigured 148 unit independent living facility and 28-bed enriched housing unit (“EHU”). The reconfiguration was approved by the Department of Health (“DOH”) in a letter dated May 10, 2004, in which approval was granted for the conversion of 15 independent living units (“ILUs”) into 28 enriched housing units. Prior to the DOH issuing approval to commence construction, approvals were received from the Department of Health’s Division of Home and Community Based Care and the New York Insurance Department to operate an enriched housing program. The conversion reconfigured the Glen Arden community to consist of 148 independent living units, 28 enriched housing units and 40 nursing home units. In addition, the community offers various amenities such as, dining room, library and swimming pool among other facilities and services.

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 eleven or more than fifteen members. There were thirteen board members as of December 31, 2005. During the year, the board is required to hold quarterly meetings one of which is to be an annual meeting. It may hold special meetings as necessary upon prior notification. The directors as of December 31, 2005 were as follows:

<u>Name</u>	<u>Principal Business Affiliation</u>
Donna G. Case-McAleer Goshen, NY 10924	President & CEO, Elant, Inc.
Michael H. Donnelly, Esq. Goshen, NY	Chairman of the Board, Glen Arden, Inc.
John S. Goodreds Goshen, NY	Vice-Chairman, Glen Arden, Inc.

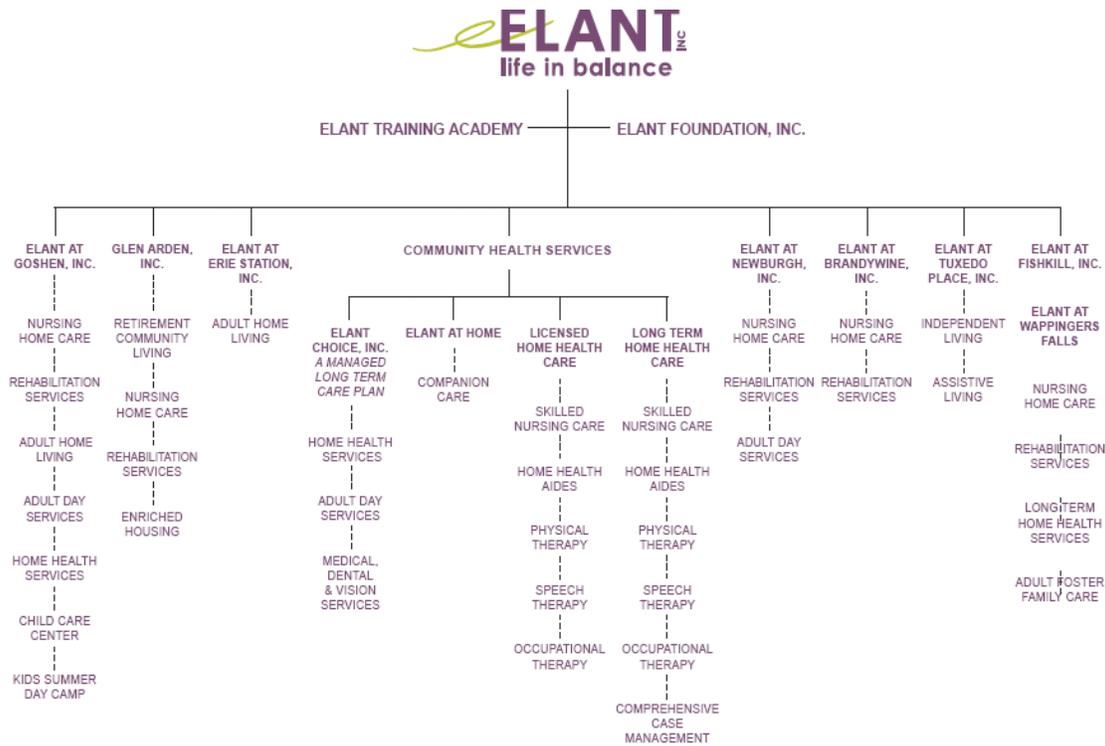
Clifford Kelsey, Jr. Goshen, NY	Treasurer, Glen Arden, Inc.
Ursula Degenhardt Goshen, NY	Secretary, Glen Arden, Inc.
Ciro Attardo, MD Chester, NY	Physician, Horizon Family Medical Group
Allan Atzrott Hopewell Junction, NY	Chief Executive Officer, St. Lukes' Hospital
Stephen M. Brown Goshen, NY	Independent Certified Public Accountant
Donna Cornell Newburgh, NY	Cornell Associates
George W. Kohl Goshen, NY	Retired
Kunwar Nagpal, DDS Port Jervis, NY	Mid Hudson Dental
William Richards, Ph.D. Westtown, NY	President, Orange County Community College
Robert Scherreik Bloomingdale, NJ	Principal, SVP McBride Corporate Real Estate Central Valley, New York

The principal officers of the Community as of December 31, 2005 were as follows:

<u>Officers</u>	<u>Title</u>
Donna G. Case-McAleer	President & CEO
Michael H. Donnelly, Esq.	Chairman
Todd A. Whitney	Executive Vice-President and CFO
John S. Goodreds, Jr.	Vice-Chairman
Clifford E. Kelsey, Jr.	Treasurer
Ursula Degenhardt	Secretary

B. Holding Company

Glen Arden currently operates within an active-parent organizational structure under Elant, Inc. (“Elant”) formerly Arden Hill Senior Health System Inc. Elant is a not-for-profit company incorporated in New York State and is the sole corporate member of a number of health care providers including Glen Arden Inc. Elant, together with its affiliates, constitutes the Elant Health Care System. The structure of the Elant Health Care System, as of the examination date was as follows:



Elant, Inc. became the sole corporate member of Glen Arden, Inc. in 1999 and provides management services to the Community under an administrative services agreement.

C. Plan of Operation

The Community provides residents with lifetime residence in an independent living unit (“ILU”) and access as needed, to an adult home (enriched housing unit (EHU))and, and a nursing center (the Health Care Center (HCC)). A resident may choose among several contract options that provide different levels of prepaid nursing care benefit days and different refund options. The consideration paid for entering into the contract and becoming a Glen Arden resident is the entrance fee and monthly maintenance fee; the amount of which is determined by the size, and layout of the residence, as well as the percentage of the entrance fee refundable, if any, and the number of nursing care benefit days. All contract options available to prospective residents include unlimited care in the Elant at Goshen Adult Home for the same monthly fee the resident would have paid in the ILU, and are described, including operative mechanisms, as follows:

Entrance Fee Requirement:

Each prospective resident is required to pay a 10% Entrance Deposit. The balance, as disclosed with the Initial Disclosure Statement, is due prior to the applicant moving in, but no later than 90 days following the effective date of the Residency Agreement. For all contract types the refund for death or withdrawal is 100% during the first 3 months of occupancy. In addition, all contract types provide that if the resident does not take possession of the unit, a refund will be made within thirty (30) days of resale of the unit however, the refund must be made no later than one year after payment. Also, in instances where a refund is due under the contract type as a result of death or withdrawal the refund will be made within thirty (30) days of resale of the unit but no later than one year after death or withdrawal.

Monthly Fee Requirement:

After the agreement is endorsed and the entrance fee is paid, the resident is subject to a monthly maintenance fee that is prorated for any partial month that the resident begins or ends occupancy. The Community is required to give sixty days written

notice before increasing the amount of the monthly fee. The increase is either to be approved by the New York Insurance Department or arrived at by using a methodology that was previously approved by the Superintendent of Insurance. All fees are intended to meet the financial requirements of Glen Arden, including but not limited, to debt service, property taxes and any other costs or expenses.

HMO Benefits:

In the event there is no agreement with the HMO and Glen Arden's Health Care Center the resident may have to be admitted to an alternate facility to obtain the HMO benefit for Medicare covered nursing home services. Regardless, the HMO enrolled resident may choose to remain at the HCC and pay the Medicare per diem and any other expense that Medicare would have paid for through the HMO

Additional Services:

The resident is responsible for services beyond those allowed under the terms of the contract, including the resident's personal private physician, private duty nurse and other privately prescribed therapies and prescription drugs. The resident is also responsible for cost associated with stays at a hospital.

Financial Hardship Subsidy for Nursing Care:

If the resident is unable to pay for nursing care and has not impaired his or her financial ability by transferring assets at less than fair market value then, Glen Arden will subsidize the resident's care up to one year to include previously used Medicare benefit days and lifetime maximum benefit days. Any subsidized amount, plus interest at the prime rate listed in the Wall Street Journal, will be charged against the refundable portion of the entrance fee. If, after the one year subsidy the resident is still unable to cover the HCCs' daily rate, Medicaid or other public or private insurance must be applied for, in the interim a portion of the refundable fee will be applied towards the payment of nursing home care.

Contract Options

Declining Entrance Fee Refund Option (available with the Full Life Option, Limited Health Care Option and Modified Health Care Option):

In this refund option, if a resident terminates residency within ninety (90) days, the entrance fee will be refunded less the cost of services provided plus accrued interest if applicable and the cost of refurbishing the ILU for resale. After ninety (90) days, the entrance fee refunded will be reduced by the costs mentioned previously and beginning with the fourth (4th) month of occupancy by a one time four percent (4%) administrative fee and a monthly two percent (2%) occupancy fee for forty-eight (48) months. After the fifty-first (51st) month, the resident is not entitled to a refund of the entrance fee. If, two persons are joint residents, refund of the unamortized second person entrance fee, if any, will be made within thirty (30) days of termination of either resident.

90% and 75% Refundable Fee Refund Option (available only with the Full Life Care Option):

For the 90% refundable option, if a resident terminates the contract or expires after ninety (90) days (but before six (6) months) the entrance fee will be refunded in the same manner as the “Declining Entrance Fee Refund Option”. If the termination of residency is after six (6) months of occupancy, the resident shall be entitled to a refund equal to ninety (90%) percent of the entrance fee. For the seventy-five (75%) percent refundable option, if a resident terminates the contract or expires after ninety (90) days (but before thirteen and one-half (13.5) months), the entrance fee paid will be refunded in the same manner as the “Declining Entrance Fee Refund Option”. If the termination of residency is after thirteen and one-half (13.5) months of occupancy, the resident shall be entitled to a refund equal to seventy-five (75%) of the entrance fee. A pro-rated refund of the second person entrance fee is payable on the first death of a two person living arrangement.

Full Life Care Option

A continuing care retirement contract holder covered under the Full Life Care Option, must maintain Medicare Part A, Medicare Part B and one supplemental Medicare health insurance policy. Such contract holder receives the benefit of an ILU, and as needed, an unlimited number of adult home benefit days and an unlimited number of nursing care benefit days at no additional charge. The refund provisions available are the Declining Entrance Fee Refund Option, the 75% Refundable Fee Refund Option, and the 90% Refundable Fee Refund Option.

Limited Health Care Option

Under the Limited Health Care Option, a resident must maintain Medicare Part A, Medicare Part B, and a Medicare supplemental health insurance policy to receive the benefit of an ILU and nursing home benefits that includes a 60 day lifetime maximum nursing home benefit (“Benefit Days”) at no cost above the resident’s monthly fee. The Benefit Days are to be applied to Medicare non-covered days, and after insurance benefits are exhausted. After the Benefit Days are used, nursing care will be billed at the full HCCs’ daily rate (per diem rate). In addition to nursing home care at the HCC, Glen Arden provides, as needed, unlimited adult home care at no additional charge. The refund provisions are the same as the “Declining Entrance Fee Refund Option”.

Modified Health Care Option

Under the Modified Health Care Option, a resident must maintain Medicare Part A, Medicare Part B, and Medicare Supplemental insurance to receive the benefit of an ILU and HCC benefits. The health care provisions within this contract provide for a 365 day lifetime limit (“365 Benefit Days” less 100 Medicare/other insurance covered days) of nursing care at no additional cost to the contract holder. The 365 Benefit Days include Medicare covered days and private insurance for nursing home care. After the 365 Benefit Days are exhausted, the resident is responsible for paying the HCC full daily rate (per diem rate). Regardless of the existence of insurance coverage the Sponsor will provide the resident with a minimum of two hundred and sixty five (265) Benefit Days in

the Health Care Center at no additional charge. In addition to nursing home care at the HCC, Glen Arden provides, as needed, unlimited adult home care at no additional charge. The refund provisions are the same as the “Declining Entrance Fee Refund Option”.

Administrative Services Agreement

Glen Arden, Inc. entered into an administrative services agreement (ASA) with Elant for management services to be provided to the Community by Elant. All management services are subject to oversight by the Glen Arden board of directors. Elant's responsibility for management services include, but are not limited to, recruitment and hiring, training, supervision and termination of staff, administration and management of benefits, operating systems, accounting systems and recordkeeping, facility maintenance and repair; the recommending of adjustments to entrance and monthly fees; and regulatory compliance.

The administrative services fee incurred for the management services is disclosed in a schedule attached to the ASA and is based upon estimates of real costs incurred by Elant. The fee is paid on a monthly basis and is subject to adjustment one hundred twenty (120) days after the year services are rendered. Monthly fees can be adjusted to actual cost incurred within thirty (30) days after receipt of additional information. The term of the agreement is for three years commencing January 1, 2001 and renewable thereafter.

4. COMMUNITY DEMOGRAPHICS

A. Occupancy Levels

As of the year ending December 31, 2005, the Community maintained 144 occupied independent living units, 13 occupied enhanced housing units and 40 occupied skilled nursing care beds. The overall occupancy level for the year ending December 31, 2005 was ninety seven (97%) percent. The target occupancy level for the Community was ninety-five (95%).

The following reflects the breakdown of occupancy at December 31, 2005 relative to the Community's independent living units by type and number of units:

Traditional	21
1 Bedroom Deluxe	45
1 Bedroom with Den	35
2 Bedroom	29
2 Bedroom with Den	<u>14</u>
Total Units	<u>144</u>

The following reflects the total occupancy rates for each year of the examination period:

Period	2003	2004	2005
Occupancy Rate	82%	95%	97%

Note: In 2003 there existed 163 independent living units. In 2004 and 2005 there were 148 independent living units (subsequent to the conversion of 15 independent living units to create the on-site enriched housing center).

B. Fees

Entrance fees increased for the years 2005 thru 2007 as follows: 3%, 5%, and 5%, respectively. In addition, the monthly maintenance fee and second person fee for the independent living units increased for the years 2004 thru 2007 as follows: 3%, 4%, 5% and 5%, respectively. The monthly maintenance fee for the enriched housing unit increased 5% for both 2006 and 2007. The required sixty-day notice was provided to the residents and such rate increases were approved by the New York Insurance Department.

5. FINANCIAL STATEMENTS

A. Balance Sheet

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

Assets:

Current assets:

Short term investments	\$6,900,000
Long term investments	747,000
Accounts receivable	183,000
Inventory	25,000
Prepaid expenses	162,000
Total current assets	8,017,000

Fixed assets:

Land and improvements	750,000
Building and improvements	38,552,000
Long term debt	(25,380,000)
Fixed and movable equipment	2,238,000
Less: accumulated depreciation	<u>(5,168,000)</u>
Total fixed assets (net of accumulated depreciation & long term debt)	10,992,000

Other assets:

Deferred finance costs	<u>\$804,000</u>
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Total Assets	<u>\$19,813,000</u>
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Liabilities:

Total Reserve Liabilities	\$24,131,000
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Net Actuarial Surplus	<u>\$(4,318,000)</u>
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Total Surplus and Liabilities	<u>\$19,813,000</u>
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It should be noted that the asset values herein are reported on an actuarial basis. As such, the values differ from the certified financial statements prepared by the Community's Certified Public Accountants using Generally Accepted Accounting Principles (GAAP basis).

As a result of this examination, the Community's minimum surplus requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$4,318,000.

B Statement of Revenue and Expenses

The statement of revenue and expenses is presented on a GAAP basis for the period January 1, 2003 through December 31, 2005.

Operating revenue:

Resident services	\$14,011,636	
Earned entrance fees	4,631,214	
Health care center revenue	<u>6,379,808</u>	
Net resident services revenue	25,022,658	
Other operating revenue	386,895	
Income from investments	<u>339,090</u>	
Net operating revenue		\$25,748,643

Operating expenses:

Salaries & wages	\$7,573,111	
Fringe benefits	1,957,242	
Supplies/Purchased services	8,155,450	
Depreciation & amortization	4,295,205	
Interest	4,405,140	
Utilities & other capital costs	865,070	
NYS health facilities assessment	<u>211,926</u>	
Total operating expenses		<u>27,463,144</u>
Loss from operations before Non-recurrent expenses		(1,714,501)
Non-recurrent expense		<u>(201,443)</u>
Unrealized loss on investments		(11,310)
Loss from operations		<u>\$ (1,927,254)</u>

Change in actuarial surplus

Surplus increased \$4,646,000 during the examination period, January 1, 2003 through December 31, 2005, detailed as follows:

Surplus as of prior exam			\$ (8,964,000)
	<u>Gain in Surplus</u>	<u>Loss in Surplus</u>	
GAAP basis net income/(loss)		\$1,927,254	
Statutory adjustment	<u>\$ 6,573,254</u>	
Net gain in surplus			\$ 4,646,000
Surplus per examination as of December 31, 2005			<u>\$ (4,318,000)</u>

6. MARKET CONDUCT REVIEW

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

- a) Underwriting, sales, and advertising
- b) Disclosure statement
- c) Residency Agreements

Initial Disclosure Statement:

The Initial Disclosure Statement is a document, issued by the CCRC in accordance with Section 4606 of the New York Public Health Law, which is used by the Community for informing prospective residents of benefits, services, fees, sponsor information including name, address, legal entity and other descriptions of the Community, including demographics. The document must be delivered to the person

with whom the contract is to be entered into or the person's legal representative prior to the execution of a contract or before the transfer of any money.

The Initial Disclosure Statement reviewed by the examiner does not conform to the standard required by Section 4606 of New York Public Health Law in that a standard information sheet was not found to be attached to the initial disclosure statements reviewed on a sample basis by the examiner.

Section 4606(14) of the New York Public Health Law states in part:

“Prior to the execution of the contract...the operator shall deliver to the person with whom the contract is to be entered into or the person’s legal representative...an initial disclosure statement which contains the following:” (14.) “In accordance with regulations promulgated by the council, the operator shall prepare a standard information sheet for each approved continuing care retirement community, which must be approved by the Department of Health, distributed with the community’s marketing materials and attached to the initial disclosure statement prepared in accordance with this section.”

It is recommended that a standard information sheet, approved by the New York Department of Health be included with any distributed marketing materials and attached to the Initial Disclosure Statement pursuant to Section 4606(14) of the New York Public Health Law.

7. SUBSEQUENT EVENTS

A. Land Sale

On June 22, 2006, Glen Arden sold a 10.477 acre parcel of land to Lifestyle Concepts, LLC (Lifestyle), a for-profit wholly owned subsidiary of Elant, Inc. According to the independent auditor’s report for Elant, Inc. and subsidiary as of December 31, 2005, Lifestyle, established in November, 2000, acquires and develops housing and healthcare facilities, which if successful, are transferred to newly formed operating entities. Elant and Lifestyle share certain common board members with Glen Arden.

As consideration for this land sale, Glen Arden received a \$900,000 promissory note from Lifestyle with interest at a rate of 7%. Both interest and consideration are due as a balloon payment upon the note's maturity on June 21, 2011.

The consideration paid by Lifestyle is equal to an appraised value determined in a June, 2000 appraisal (an approximately six year old appraisal). At that time, the property's highest and best use was considered as office usage. Senior housing development is a permitted use subject to site plan approval by the local planning board. Prior to the sale of the property, Elant received approval by the planning board to construct a sixty-six (66) unit adult condominium development. Costs incurred with regard to securing planning board and New York State approval for such development were reported at \$527,026.

An appraisal of the property, made as of March 22, 2006, for the purpose of obtaining project financing from Provident Bank, indicated a value of the vacant 10.447 acres, with approvals secured and estimated on an "as is" basis as \$3,700,000. A review of comparable sales prices within the area and a desk audit of the March 22, 2006 appraisal by this Department's Real Estate section indicates that the \$3,700,000 value appears reasonable.

Thus, Elant/Lifestyle incurred costs of \$1,427,026 (sale price of \$900,000 and subsequent approval costs of \$527,026) in acquiring an asset from affiliate, Glen Arden that had an estimated \$3,700,000 value. Taking into consideration the aforementioned \$527,025 costs related state and local approvals relative to the development of this property and the March 22, 2006 valuation of the property, the residual site value (net of approval costs) is \$3,172,974.

In this regard, the appraiser of the March 22, 2006 valuation of the property indicated that the cost of approved land and infrastructure typically amount to 20 to 25 percent of the value of the units to be sold. Despite having infrastructure costs in excess of the norm, the cost of land, approvals and infrastructure represents 14.3 percent of the

reported average unit sales price of the Elant/Lifestyle development. This indicates that the land was acquired at a substantial discount from the cost attributed to a typical condominium/townhouse development in such area.

In light of the above, a value of \$3,200,000 appears reasonable for this site.

Section 1119(a) of the New York Insurance Law states in part,

“An organization complying with the provisions of article forty-six of the public health law...must comply with the provisions of this chapter by virtue of such article, and such organization must comply with rules and regulations of the superintendent relating to:

(1) financial feasibility of the continuing care retirement community,..”

Section 1505 of the New York Insurance Law states in part,

“(a) Transactions within a holding company system...shall be subject to the following:

(1.) the terms shall be fair and equitable:...

(c) The superintendent’s prior approval shall be required for the following transactions between a domestic controlled insurer and any person in its holding company system: sales, purchases, exchanges, loans or extensions of credit, or investments, involving five percent or more of the insurer’s admitted assets at last year end....”

Inasmuch as the above land sale was based on a six year old land appraisal, the sale was made at a price which was significantly lower than the most recent appraisal and Elant and Lifestyle share certain common board members with Glen Arden, it is recommended that Glen Arden comply with the provisions of Sections 1119(a)(1) and 1505(a)(1)&(c) of the New York Insurance Law and seek the approval of the New York Insurance Department and the New York Department of Health prior to entering into a sale of land or building property and/or promissory note(s) with any entity, including a member of the Elant, Inc. holding company.

In addition, Glen Arden was unable to provide the examiner with its board of directors' minutes or copies of such minutes pertaining to discussions of the land sale as requested by this Department in a letter to the Community dated October 5, 2007. A review of the Community's board discussions relative to the land sale and possible conflict of interest thereon was thus not available for review.

It is recommended that the Community provide this Department with the pertinent board of directors' minutes pertaining to discussions and/or approval of the above land sale as requested by this Department in a letter to the Community dated October 5, 2007.

It is noted that Elant, Inc. and Lifestyle Concepts, LLC share certain board members with Glen Arden, Inc.

Section 715 of the New York Not-for-Profit Corporation law states in part,

“(a) No contract or other transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, firm, association or other entity in which one or more of its directors or officers are directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such director or directors or officer or officers are present at the meeting of the board, or of a committee thereof, which authorizes such contract or transaction, or that his or their votes are counted for such purpose:

(1) If the material facts as to such director's or officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the board or committee, and the board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of such interested director or officer; or

(2) If the material facts as to such director's or officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the members entitled to vote thereon, if any, and such contract or transaction is authorized by vote of such members.

(b) If such good faith disclosure of the material facts as to the director's or officer's interest in the contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the members entitled to vote thereon, if any, and such contract or transaction is authorized by vote of such members."

It is recommended that Glen Arden comply with the provisions of Section 715 of the New York Not-for-Profit Corporation Law with regard to effecting contracts or transactions with other entities including affiliated corporations in which certain directors and/or officers are also directors and/or officers of such other entities, including affiliated corporations.

As of the date of this writing, there are two structures constructed on the site. Also, in this regard, Glen Arden has submitted an application to the New York State Department of Health to expand the number of independent living units. Such expansion encompasses the acquisition and use of the sixty-six (66) units approved for the Lifestyle Concepts, LLP project noted above. With regard to such application, Lifestyle Concepts has indicated that it proposes to sell the above 10.447 acre parcel of land back to Glen Arden.

At the time of this writing, the New York Insurance Department and the New York Department of Health are in the process of reviewing Glen Arden's application relative to the sale of the 10.447 acre of land and development of such land back to Glen Arden.

B. Advances/Loans to Parent

As of December 31, 2006, Glen Arden reported \$2,299,780 as due from its parent, Elant, Inc. Such amount, according to Elant, Inc.'s CFO, represented amounts advanced by Glen Arden to Elant, Inc. in order to cover Elant's overhead expenses relative to several of Elant's subsidiaries. Approximately \$800,000 of the aforementioned \$2,299,780 was noted to be over 90 days due as of December 31, 2006.

A review of the Community's unaudited balance sheet for the period ended December 31, 2007 submitted to this Department indicates that such advances/loans have increased to approximately \$3,200,000 as of such date. Approximately \$2,500,000 of this amount was over 90 days due as of December 31, 2007. Management has indicated that the increase for this receivable during calendar year 2007 was due to temporary cash advances made by Glen Arden to Elant, Inc.

A review of the Community's unaudited balance sheet for the period ended January 31, 2008, submitted to this Department, indicates that such advances/loans increased further to approximately \$3,400,000 as of such date.

Section 1505(c) of the New York Insurance Law states the following,

“The superintendent’s prior approval shall be required for the following transactions between a domestically controlled insurer and any person in its holding company system: sales, purchases, exchanges, loans or extensions of credit, or investments, involving five percent or more of the insurer’s admitted assets at last year-end.”

Section 1505(d) of the New York Insurance Law states in part,

“The following transactions between a domestic controlled insurer and any person in its holding company may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it with such period;

(1) sales, purchases, exchanges, loans or extensions of credit, or investments, involving more than one-half of one percent but less than five percent of the insurer’s admitted assets at last year-end;...”

Part 350.6(c) of New York Insurance Department Regulation 140 (11 NYCRR 350) states, in part,

“After satisfying the requirements of subdivisions (a) and (b) of this section, 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:...”

The Community has deviated from the approved restoration plan by making such advances/loans since management has converted assets, previously permitted on its actuarial balance sheet, to assets which are not permitted on its balance sheet (overdue receivables).

Glen Arden has agreed not to make any additional loans and/or cash advances to Elant, Inc. or any of its affiliates without the prior written approval of the New York Insurance Department.

As discussed in item “C. Application For Expansion” of this report, below, the Community has submitted an application for expansion. As part of the proposed expansion plan, the entire amount of the outstanding advances/loans is projected to be repaid through the transfer back to Glen Arden of the Lifestyle Concepts, Inc. parcel of land as improved. Should the New York Insurance Department and the New York Department of Health approve the expansion application and approve the transfer of the parcel of land back to Glen Arden, the resulting financial entries are projected to remove the outstanding advances/loans from Glen Arden’s balance sheet.

Should the projected financial entries discussed above not fully offset the outstanding advances/loans, or should the expansion project not proceed, it is recommended that the Community take the necessary steps to recover all outstanding advances/loans made to Elant, Inc.

It is also recommended that, in the future, the Community comply with the prior approval requirements or notification requirements of Section 1505(c)&(d) of the New York Insurance Law prior to any advances or loans being made to any members of its holding company.

C. Application For Expansion

In December, 2007, the Community submitted an application to the New York Department of Health and the New York Insurance Department to expand the Community by constructing new independent living units on the parcel of land previously sold to Lifestyle Concepts, Inc. in 2006 (noted in item “A. Land Sale” above). It was anticipated that the Community would purchase back the land previously sold to Lifestyle Concepts, Inc. at the original sales price of \$900,000, however, at the time of this writing there is a lien on such property in the approximate amount of \$4,000,000 which the Community would assume responsibility at the time of the purchase buy back. This

application is currently under review by the New York Department of Health and the New York Insurance Department.

It is recommended that, prior to initiating such expansion and incurring the above mentioned lien and anticipated project costs, the Community should recover all of the outstanding advances/loans made to Elant, Inc.

8. CONCLUSION

As of December 31, 2005, the Community's minimum surplus requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$4,318,000.

The Community is currently operating under a Plan of Restoration (Plan) that was accepted by the New York Insurance Department on August 7, 2006. The Plan of Restoration relies on administrative cost reductions, fee increases, and the maintenance of an overall ninety-five (95%) occupancy rate. The restoration plan is currently being monitored by the New York Insurance Department.

It is recommended that the Community continue to operate under the Plan of Restoration, accepted by the New York Insurance Department on August 7, 2006, in order to bring its surplus to an adequate level.

9. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. <u>Plan of Operation</u></p> <p>It is recommended that each CCRC contract contain the entire provision outlined in Section 4608(7) of the New York Public Health Law.</p> <p>The Community has complied with this recommendation.</p>	<p>9</p>
<p>B. <u>Initial Disclosure Statement</u></p> <p>It is recommended that an approved standard information sheet be included with any distributed marketing materials and attached to the initial disclosure statement pursuant to Section 4606(14) of the New York Public Health Law.</p> <p>The Plan has not complied with this recommendation. A similar recommendation is included within this Report on Examination.</p>	<p>10</p>
<p>C. <u>Administrative Services Agreement</u></p> <p>It is recommended that the administrative services agreement with Elant, Inc. be renewed or that a new agreement be established.</p> <p>The Community has complied with this recommendation.</p>	<p>11</p>
<p>D. <u>Plan of Restoration</u></p> <p>It is recommended that the Community continue to operate under the plan approved on September 28, 2001 and amended on May 19, 2004 to improve its actuarial reserve to an adequate level and restore its minimum surplus to comply with NYSID Regulation 140 (11 NYCRR 350.8(a)).</p> <p>As of the time of this writing, the Community was operating under a revised Plan of Restoration which was approved by the New York Insurance Department on August 7, 2006.</p>	<p>16</p>

10. 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 minimum surplus requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$4,318,000.</p> <p>It is recommended that the Community continue to operate under the Plan of Restoration, accepted by the New York Insurance Department on August 7, 2006, in order to bring its required surplus to an adequate level.</p>	<p>2,4,15,26</p>
<p>B. <u>Initial Disclosure Statement</u></p> <p>It is recommended that a standard information sheet, approved by the New York Department of Health be included with any distributed marketing materials and attached to the initial disclosure statement pursuant to section 4606(14) of the New York Public Health Law.</p>	<p>18</p>
<p>C. <u>Land Sale</u></p> <p>It is recommended that Glen Arden comply with the provisions of Sections 1119(a) and 1505(a)(1)&(c) of the New York Insurance Law and seek approval of the New York Insurance Department and the New York Department of Health prior to entering into a sale of land or building property and/or promissory notes(s) with any entity, including a member of the Elant, Inc. holding company.</p> <p>It is recommended that the Community provide this Department with the pertinent board of directors' minutes pertaining to discussions and/or approval of the above land sale as requested by this Department in a letter to the Community dated October 5, 2007.</p>	<p>20</p> <p>21</p>

<u>ITEM</u>	<u>PAGE NO.</u>
C. <u>Land Sale (Continued)</u>	
It is recommended that Glen Arden comply with the provisions of Section 715 of the New York Not-For-Profit Corporation Law with regard to effecting contracts or transactions with other entities including affiliated corporations in which certain directors and/or officers are also directors and/or officers of such other entities, including affiliated corporations.	22
At the time of this writing, the New York Insurance Department and the New York Department of Health are in the process of reviewing Glen Arden's application relative to the sale of the 10.447 acre of land and development of such land back to Glen Arden.	22
D. <u>Advances/Loans to Parent</u>	24,25
Glen Arden has agreed not to make any additional loans and/or cash advances to Elant, Inc. or any of its affiliates without the prior written approval of the New York Insurance Department. Should the projected financial entries discussed at item 7B of this report not fully offset the outstanding advances/loans, or should the expansion project not proceed, it is recommended that the Community take the necessary steps to recover all outstanding advances/loans made to Elant, Inc. It is also recommended that, in the future, the Community comply with the prior approval or notification requirements of Section 1505(c)&(d) of the New York Insurance Law prior to any advances or loans being made to any members of its holding company.	
E. <u>Application For Expansion</u>	
It is recommended that, prior to initiating such expansion and incurring the lien and anticipated project costs, the Community should recover all of the outstanding advances/loans made to Elant, Inc.	26

Appointment No. 22590

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:

Barbara Finnerty

as a proper person to examine into the affairs of the

Glen Arden, Inc.

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

Continuing Care Retirement Community

with such information as she shall deem requisite.

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

this 27th day of February 2007



Eric R. Dinallo
Acting Superintendent of Insurance

