



Application:
The Knolls at Goshen CCRC

CCRC Type: Public Health Law Article 46

County: Orange

Purpose: This application proposes to establish The Knolls at Goshen, Inc. as the new operator of Glen Arden CCRC. The CCRC will be operated under the name “The Knolls at Goshen.”

Executive Summary

Glen Arden CCRC is located on 41-acres in Goshen, New York and operates under a New York State Public Health Law (“PHL”) Article 46 Certificate of Authority (“CoA”) for 148 Independent Living Units (“ILU”), 28 Enriched Housing Units (“EHU”), and 40 Skilled Nursing beds. Glen Arden CCRC is operated by Glen Arden, Inc. and Elant, Inc., both being New York not-for-profit corporations. The CoA for Glen Arden CCRC was issued in December 1994 and the community began admitting residents in June 1996. Glen Arden CCRC experienced an extended period of low ILU occupancy and incurred operational cash deficits that required the parent company and co-operator, Elant, Inc., to provide financial support. In October 2019, the CCRC Council moved to suspend the CoA of Glen Arden CCRC due to noncompliance with statutory requirements for CCRCs and financial insolvency. The suspension was converted to a limitation under an agreement with the Department of Health (“DOH”) that allowed the operator, Glen Arden, Inc., to hire a management company for the purposes of stabilizing operations and transitioning the CCRC to a new operator. In December 2019 Glen Arden, Inc. and Elant, Inc. entered into a management services agreement with Bethel Communities Management I, LLC (“BCM”) to manage day to day operations of Glen Arden CCRC. In January 2022, an affiliate of BCM, The Knolls at Goshen, Inc. (“TKG” or “Applicant”), entered into an asset purchase agreement with Glen Arden, Inc. and Elant, Inc. to purchase substantially all of the assets used in the business and assume substantially all of the liabilities.

On October 28, 2022, DOH received a CoA application from TKG, a New York not-for-profit corporation, seeking CCRC Council approval to be established as the new operator of Glen Arden CCRC. The application describes how TKG will work towards full compliance with PHL Article 46 and associated regulations while increasing Independent Living Unit occupancy of the CCRC to achieve stable occupancy. The operating plan proposed by the Applicant is achieved through assumption of certain Glen Arden CCRC assets and liabilities, payment terms with creditors for past due accounts payable, infusion of \$5 million in new funds, assignment of the existing land lease, and the ramp up of required statutory reserves over a period time per an agreement with the Department of Financial Services (“DFS”). The proposed transaction will result in the assumption of existing and active Glen Arden CCRC resident’s contracts, known as Residency Agreements, and the obligations contained therein.

The approach presented within the application is based in part on a plan previously implemented by the Applicant’s affiliate at The Knolls CCRC (located in Valhalla, New York), which was acquired via a Federal Chapter 11 Bankruptcy proceeding in 2016. New Residency Agreements and pricing in the application is similar to what has been implemented by the current operator of Glen Arden CCRC ahead of this transaction for the purposes of testing market reaction. The Applicant believes the positive response to the new Residency Agreements and pricing, conservative financial approach, and flexibility in cash liquidity provided

for in the ramp up of statutory reserves will contribute to the success of the operating plan proposed for The Knolls at Goshen CCRC.

Recommendation

This application meets the requirements for approval as set forth in 10 NYCRR 900.4, therefore contingent approval is recommended.

Review

Program Overview

	Existing	Proposed
CCRC Name	Glen Arden CCRC	The Knolls at Goshen CCRC
Address	214 Harriman Drive Goshen, NY 10924	Same
Independent Living Units	148	Same
Enriched Housing Units	28	Same
Skilled Nursing beds	40	Same
Class of Operator	Not-for-profit Corporation	Not-for-profit Corporation
Operator	Glen Arden, Inc. <u>Active Parent/Co-operator</u> Elant, Inc.	The Knolls at Goshen, Inc <u>Board of Directors:</u> James Campbell Rev. Dr. John Carrington Robert Elliott Rev. Kevan Thomas Hitch Margaret McGarrity Richard Merbaum Andrew Samalin

No changes in physical environment are proposed in this application. Services to be offered by the Knolls at Goshen CCRC are consistent with the services currently offered at Glen Arden CCRC.

The Applicant will assume defined assets and liabilities of Glen Arden CCRC through execution of an Asset Purchase Agreement dated January 24, 2022, with the current operator. Financing for the transaction will occur through an agreement for TKG to assume the full outstanding balance of \$13,570,000 in Orange County New York Industrial Developmental Agency (“IDA”) 1998 tax-exempt bonds, the issuance of \$4,500,000 in Corporate taxable series 2023 bonds, and \$500,000 in a cash contribution from the Applicant. The Applicant will assume all current Residency Agreements of Glen Arden CCRC and payment terms for entrance fee refunds from terminated Residency Agreements.

The current management agreement between Glen Arden, Inc., Elant, Inc. and BCM will be terminated as a result of the transaction. BCM will be providing certain administrative services to The Knolls at Goshen CCRC post transaction under a consulting and administrative services agreement. The financing term sheet for TKG require fees due to BCM to be subject to a waterfall payment clause where certain fees and debt can be paid only after 110 days cash on hand has been accumulated and after payment of operating expenses (including interest, monthly bond principal payments, rent, taxes and PILOTs), entrance fee refunds and capital expenditures.

The existing lease agreement between Glen Arden Inc. (tenant) and Garnet Health Medical Center (landlord) will be assigned to TKG (tenant) under an Assignment, Assumption, and Consent agreement between the parties dated June 22, 2022. The agreement requires payment of rent in arrears with a portion due upon closing, then monthly installment payments for the remainder due until all rent in arrears is paid in full. The ground lease assumed terminates on June 1, 2097.

The Applicant has demonstrated they intend to operate under a plan to meet requirements under PHL Article 46 and associated regulations, with the following considerations requested:

- *To accumulate the necessary liquidity, the Applicant has requested flexibility from the Department of Financial Services in applying requirements for the funding of statutory reserves.*
- *As part of this application, TKG has requested approval under 10 NYCRR 900.8(b)&(c) to allow the CCRC to provide, for a period of seven years, skilled nursing and enriched housing services to persons who are not residents of the community. This request is being made to allow the Applicant to maximize revenue through utilization of a resource that would otherwise be vacant due to the initial low occupancy in Independent Living Units. As apartment occupancy increases, the internal demand for health care beds will dictate the need for use by CCRC residents. It is expected that the Applicant will oversee the occupancy of the health care beds to ensure that these services are available to CCRC residents should they need them.*

The Applicant will provide services to residents as set forth in a Residency Agreement contract that complies with the requirements set forth in PHL § 4608. Contracts will be offered at varying price points based on apartment size and contract type. Full life care (Type A) and fee-for-service contracts (Type C) will be offered with a fully declining balance entrance fee refund; a fixed 80% entrance fee refund option will be offered for the fee-for-service contracts (Type C) only.

Glen Arden CCRC has not paid the DOH for the 2020 and 2021 annual fee assessed as per 10 NYCRR 900.9(b). A condition has been added to this approval requiring the outstanding fees to be paid upon completion of the proposed transaction.

The Applicant has received the necessary establishment approval for the PHL Article 28 residential health care facility license and the Social Services Law Article 7 adult care facility license. The Applicant will be required to complete paperwork necessary to receive operating certificates post CCRC Council approval of this application and closing on the transaction. While this application is not directly subject to the New York State Office of Attorney General (“OAG”) approval, the transaction for the assumption of assets and liabilities of the not-for-profit organization may be subject to review and approval by the OAG.

Conclusion:

The program to be operated as proposed in this application will meet the approval requirements for a CCRC as set forth in 10 NYCRR 900.4(c)(1),(2),&(6).

Character and Competence Review

Character and Competence – Background

- Facilities Reviewed

The following health care operations were reviewed for the past 10 years as shown below.

Nursing Homes

Bethel Nursing Home Company Inc.	06/2012 to present
Bethel Nursing & Rehabilitation Center	06/2012 to present
Amsterdam Nursing Home	06/2012 to 07/2022

Hospitals

New York Presbyterian Brooklyn Methodist Hospital	09/2012 to 09/2022
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CCRC

The Knolls	11/2016 to present
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- Individual Background Review

James Campbell is currently retired and has been so since 2009. Prior to retirement James Campbell was the executive director of Leake and Watts Services, Inc, which is a not-for-profit social services agency providing services for children and families located in Yonkers, NY since 1976. James Campbell holds a master's degree in Social Work from Fordham University. James Campbell discloses the following interests in health facilities:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/2012 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/2012 to present

End Dated Facilities

Amsterdam Nursing Home (Board Member)	06/2009 to 07/2022
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CCRC

The Knolls (Board Member)	11/2016 to present
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Rev. Dr. John Carrington is currently retired and has been so since 2018. Prior to retirement Rev. Dr. John Carrington was the Pastor at St. Mark's United Methodist Church located in New York, NY since 2015. Rev. Dr. John Carrington holds a doctorate degree in Ministry from New York Theological Seminary. Rev. Dr. John Carrington discloses the following interests in health facilities:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/1976 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/1976 to present

Hospitals

New York Presbyterian Brooklyn Methodist Hospital (Board Member)	12/1968 to 9/2022
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CCRC

The Knolls (Board Member)	11/2016 to present
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Robert Elliott is currently retired and has been so since January 2022. Before retirement Robert Elliott was a contracted Director at New York Municipal Energy Program an energy aggregator business located in New York, NY since January of 2020. Prior to that Robert Elliott was an Executive Director at Sustainable Westchester, Inc. a nonprofit that business that provided energy programs and education to municipalities and residents of Westchester County located in Mt. Kisco, NY from June 2016 to January 2020. Robert Elliott holds a Master of Business Administration degree from George Washington University School of Government and Business. Robert Elliott discloses the following health facility interests:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/2000 to 06/2022
Bethel Nursing & Rehabilitation Center (Board Member)	06/2000 to 06/2022

CCRC

The Knolls (Board Member)	11/2016 to 06/2022
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Rev. Kevan Thomas Hitch lists employment at: Valhalla United Methodist Church as Pastor located in Valhalla, NY since 2003. Rev. Kevan Thomas Hitch holds a Master of Divinity degree from Princeton Theological Seminary and discloses the following health facility interests:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member)	06/2006 to present
Bethel Nursing & Rehabilitation Center (Board Member)	06/2006 to present

CCRC

The Knolls (Board Member) 11/2016 to present

Margaret McGarrity is currently retired and has been so since 2010. Prior to retirement Margaret McGarrity was the Director of Physical Therapy at Maryknoll Sister's Nursing Home and Assisted Living since 1984 and concurrently worked as a physical therapist for the Visiting Nurse Association and the Visiting Nurse Service since 1977. Margaret McGarrity holds a master's degree in Physical therapy from New York University and disclosed the following health facility interests:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member) 06/2016 to present
Bethel Nursing & Rehabilitation Center (Board Member) 06/2016 to present

CCRC

The Knolls (Board Member) 11/2016 to present

Richard Merbaum is currently retired and has been so since March 2022. Prior to retirement Richard Merbaum worked for Willis Group Holdings Limited an insurance brokerage firm located in New York, NY for 35 years. Richard Merbaum holds an insurance broker license in the state of New York that is in good standing and a Master of Business Administration degree from Columbia University. Richard Merbaum discloses the following health facility interests:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member) 06/2002 to present
Bethel Nursing & Rehabilitation Center (Board Member) 06/2002 to present

CCRC

The Knolls (Board Member) 11/2016 to present

Andrew Samalin lists employment at: Samalin Investment Counsel, LLC an investment advisory practice as principal located in Chappaqua, NY since 2007. Andrew Samalin holds an active Enrolled Agent license with the IRS and is a licensed Certified Financial Planner in good standing. Andrew Samalin holds a master's degree from New York University. Andrew Samalin discloses the following health facility interests:

Nursing Homes

Bethel Nursing Home Company Inc. (Board Member) 06/2007 to 06/2022
Bethel Nursing & Rehabilitation Center (Board Member) 06/2007 to 06/2022

CCRC

The Knolls (Board Member) 11/2016 to 06/2022

Character and Competence - Analysis

All health care facilities are in substantial compliance with all rules and regulations. No negative information has been received concerning the character and competence of the proposed applicants.

A review of operations of Amsterdam Nursing Home Corp (1992), NY for the period identified above reveals the following:

- The facility was fined \$12,000.00 pursuant to Stipulation and Order NH-21-046 issued for surveillance findings on January 25, 2021, under 10 NYCRR 415.19(a)(1) and 415.19(a)(2) Infection Control.
- The facility was fined \$6,000.00 pursuant to Stipulation and Order NH-21-013 issued for surveillance findings on December 10, 2020, under 10 NYCRR 415.11(c)(1) Resident Assessment and Care Planning and 415.19(a)(1) Infection Control.

Character and Competence - Conclusion

This application meets the requirements for approval on Character and Competence as set forth in 10 NYCRR 900.4(c)(3)&(d).

Ability to Organize and Market Demand Review

The Board of Directors for TKG overlaps with the Board of Directors for The Bethel Methodist Home, operator of The Knolls CCRC in Valhalla, New York. BCM provides consulting and administrative services to the Knolls CCRC in Valhalla, New York, and will be providing similar services to The Knolls at Goshen CCRC. BCM has been the manager of day-to-day operations of Glen Arden CCRC since December 2019, which will provide a seamless transition to the new operator with respect to the day-to-day operations and interactions with staff, residents, and their families. Staffing at The Knolls at Goshen CCRC is expected to be maintained throughout the transition as employees were required to be notified of the proposed change of ownership under Subdivision 2-b of Article 2801-a of Public Health Law. TKG will submit a written agreement with 1199SEIU, who represents the unionized workforce at the CCRC, that it will maintain the same wages, contributions and make offers to the union employees to retain employment post transaction.

The CCRC is situated on approximately 41-acres of land located in Goshen, Orange County, New York adjacent to the new LEGOLAND theme park that opened in May 2021. In addition to Independent Living Units and services provided for in the onsite health center, the CCRC includes common areas and amenities such as the central dining room, a private dining room, a kitchen, activities areas, lobbies, an exercise center including an indoor pool, library, arts studio, auditorium, gift shop, business center, bank, billiards room, theater, tennis courts, walking paths and administrative areas. A new exit ramp from State Route 17 was installed for LEGOLAND and provides easy access to the CCRC campus.

The Knolls at Goshen CCRC will offer the following Residency Agreements to seniors aged 62 years or older:

Two options for Life Care (Type A) Residency Agreements. Life Care Option 1 is paid for with a one-time entrance fee per resident, followed by the payment of the standard Monthly Service Fee for the duration of the Residency Agreement. Life Care Option 2 is paid for with a smaller entrance fee payable upfront per resident, followed by the payment of the Monthly Service Fee per resident and an additional "life care" monthly fee per resident for the duration of the resident's residency at The Knolls at Goshen. Under either option the entrance fee is fully refundable for the first 90 days after the resident's occupancy date. If the resident terminates more than 90 days after the resident's occupancy date, but within 48 months of such date, the flat fee is refundable subject to a four percent (4%) administration fee and an additional two percent (2%) for each full or partial month of residency beginning with the month of the resident's occupancy date. The flat fee is no longer refundable after 48 months of occupancy by the resident and the entrance fee refund is reduced to zero.

Fee-for-Service (Type C) Residency Agreements. Paid for with a one-time entrance fee per resident, followed by the payment of the standard Monthly Service Fee while the resident remains in an Independent Living Unit. The resident is responsible for all costs associated with skilled nursing care or enriched housing services received. Health Care Services are not included as part of the Residency Agreement. All Health Care Services under the Residency Agreement will be paid for by the resident on a fee-for-service basis at a published market rate. This Residency Agreement offering will have two entrance fee refundability options:

1. **80% Refundable:** Under the 80% refundable option, the entrance fee is fully refundable for the first 90 days after the resident's occupancy date. If the resident terminates more than 90 days after the resident's occupancy date, a portion of the entrance fee will be refunded subject to a minimum of 80% of the total entrance fee, with the deduction of a four percent (4%) administration fee and an additional two percent (2%) for each full or partial month of residency beginning with the month of the resident's occupancy date.

2. Declining Balance: Under the declining balance option, the entrance fee is fully refundable for the first 90 days after the resident's occupancy date. If the resident terminates more than 90 days after the resident's occupancy date, but within 48 months of such date, the entrance fee is refundable subject to a four percent (4%) administration fee and an additional two percent (2%) for each full or partial month of residency beginning with the month of the resident's occupancy date. The entrance fee is no longer refundable after 48 months of occupancy by the Resident and the entrance fee refund is reduced to zero.

Pricing will vary by Residency Agreement option selected and the size and style of the Independent Living Unit apartment chosen. Pricing can be found in the Standard Information Sheet that has been included as an attachment to this exhibit.

With Independent Living Unit occupancy of Glen Arden CCRC at 41.2%, consumers have a wide range of choices to choose from at various price points. The current inventory of unit types is shown in the chart below.

Unit Type	Total #	BR	BA	Size (sq. ft.)	Available Units
Unique Adirondack	1	1	1	500	1
Adirondack	13	1	1	500	6
Catskill	45	1	1	700	28
Erie	25	1/Den	1.5	860	11
Hudson	10	1/Den	1.5	860	5
Unique Hudson	4	1/Den	1.5	915	0
Niagara	40	2	2	1,000	31
St. Lawrence	10	2	2	1,240	5

BCM, as the manager of Glen Arden CCRC, and the current operator began test marketing the new Residency Agreement options and pricing in June 2022. Through January 31, 2023, seven Independent Living Units have been reserved and/or occupied under the new pricing structure while being subject to enhanced disclosure of the financial condition of Glen Arden CCRC. The new Residency Agreements are expected to achieve a sustained rate of sales once the proposed transition has been completed, new financial resources are obtained, capital improvements are made, and the financial condition of the CCRC improves. The market study submitted with the application shows consistent and sustained Independent Living Unit occupancy growth where a stabilized occupancy rate of 85.1% is achieved within four to five years post transaction, depending on the Independent Living Unit occupancy rate at the time of transaction closing.

The Market Study submitted with the application provides information that documents the lack of existing Independent Living competition in Glen Arden CCRC's primary market area. The closest New York State CCRCs to Glen Arden are Woodland Pond of New Paltz at 98% Independent Living Unit occupancy and The Knolls (located in Valhalla) at 97% Independent Living Unit occupancy. Recently, the DOH conditionally approved Woodland Pond of New Paltz to expand by six Independent Living Units due to strong consumer demand for the product offered. Statistics in the market study demonstrate the median sales price for homes in the primary market area are sufficient to cover the entrance fees being charged under the new pricing structure. The same study shows there are 4,437 income eligible households with seniors aged 75+ within the primary market area whose household income totals \$75,000 or more. Glen Arden CCRC has been able to draw consistent consumer interest from seniors over recent years and through times of financial difficulties due to the lack of similar senior living options in the primary market area and the quality of care offered in the health center at Glen Arden. These factors combined make it reasonable to expect steady consumer demand for an appropriately priced CCRC that is well maintained and financially stable.

Refer to the *Examination of a Financial Projection and Market Study* that has been included as an attachment to this exhibit for further details on the Market Study submitted with the application.

Conclusion:

The Applicant has demonstrated experience in operating a CCRC in New York State. The CCRC is sized appropriately with available units that should be attractive to potential residents under new Residency Agreement types and price points that have been test marketed under the current operator. There appears to be opportunity in the market to support sales levels that could eventually lead to stable occupancy. Therefore, the Applicant has demonstrated that the proposed CCRC will meet the requirements for approval as set forth in 10 NYCRR 900.4(c)(1),(5),(6).

Financial Review

In consideration of the sale of certain Glen Arden CCRC's assets, TKG shall pay, on behalf of Glen Arden, Inc. ("Glen Arden") and Elant Inc. ("Elant" and together with Glen Arden, collectively, the "Seller"), the aggregate sum of \$41,073,642.33 (the "Purchase Price") in the form of assumed liabilities, as defined in the Asset Purchase Agreement ("APA") between the TKG and the Seller dated January 24, 2022. There shall be no cash consideration paid by TKG. The Purchase Price will be adjusted at closing to reflect the value of the purchased assets and the assumed liabilities, as defined in the APA. According to an Examination of a Financial Projection and Market Study for the Nince Months Ending December 31, 2023 and Each of the Five Years Ending December 31, 2028, dated February 10, 2023 (the "Feasibility Study"), the purchased assets and assumed liabilities are both assumed to total \$44,878,000.

According to the Financing Term Sheet ("Term Sheet") submitted to DFS on April 12, 2023, Glen Arden currently has \$13,570,000 in Series 1998 tax-exempt bonds outstanding (the "Series 1998 Bonds"). TKG will assume the Series 1998 Bonds and issue \$4,500,000 in taxable Series 2023 Bonds to provide working capital and liquidity. The Series 2023 Bonds will be funded by existing bondholders.

According to the Feasibility Study, in January 2021, Glen Arden and UMB Bank, N.A., (the "Trustee"), entered into a forbearance agreement (the "Forbearance Agreement") after events of default occurred, including failure to make interest and principal payments on the Series 1998 Bonds, PILOT agreement payments, ground lease payments, and pension obligation payments. The Forbearance Agreement and subsequent extensions provided relief from payments of principal and interest through January 15, 2023, and requires monthly reporting of results and milestones from operations consistent with an operating budget approved by the parties. Management assumes that the Forbearance Agreement will be extended through the closing of the Series 2023 Bonds. Management also assumes that the Forbearance Agreement will be extended through April 1, 2026 with an amendment containing provisions for a cash waterfall, subject to maintaining cash above 110 Days Cash on Hand after payment of certain expenses as discussed below.

According to the Term Sheet, the total proposed funding for the CCRC project is \$5,000,000 to be financed as follows:

- \$500,000 via equity by TKG;
- \$4,500,000 corporate taxable Series 2023 bonds, 8% fixed rate, 20-year term, interest only for five years followed by 15-year amortization and level debt service. The Series 2023 Bonds will be redeemable at par at any time.

According to the Term Sheet, cash above 110 Days Cash on Hand after payment of operating expenses (including interest, monthly bond principal payments, rent, taxes and PILOTs), entrance fee refunds and capital expenditures will be utilized in accordance with the following waterfall:

- First, to fund a Series 2023 Bonds Debt Service Reserve Fund;
- Second, to replenish the Series 1998 Bonds Debt Service Reserve Fund to its required amount;
- Third, to pay any outstanding deferred management fees owed to the BCM;

- Fourth, to pay the deferred 2021, 2022, and 2023 principal payments for the Series 1998 Bonds; and
- After payment in full of the 2021, 2022, and 2023 Series 1998 principal payments and subject to maintaining 110 Days Cash on Hand or other reserve requirements, TKG may elect to prepay the Series 2023 Bonds and pay management fees deferred by BCM prior to closing. Such prepayments and payments, if made, must be equal in amount.

The Term Sheet identifies TKG as the borrower and UMB Bank, National Association as the Bond Trustee.

The Feasibility Study states that the funds, \$5,000,000 in total, will be used as follows:

- \$2,761,000 for working capital;
- \$500,000 for statutory reserve requirement;
- \$634,000 for partial payment of accrued PILOT, taxes, and rent;
- \$502,000 costs related to acquisition; and
- \$603,000 costs of issuance.

According to the Feasibility Study, Management of BCM and TKG has implemented a strategic initiative to increase occupancy at the CCRC.

TKG will be offering *Type A* and *Type C* residency agreements. The contracts and their pricing structure have been included as attachments to this exhibit (see Attachment C). These contracts have positive margins, with the mix of contracts and distributions expected to be:

Type A Lifecare Option 1 - Declining Balance	25.00%
Type A Lifecare Option 2 - Declining Balance	25.00%
Type C - Declining Balance	33.35%
Type C – 80% Refundable	16.65%

TKG has requested approval from the DOH to allow non-resident admissions to the Enriched Housing Units and Skilled Nursing beds for a seven-year period as allowed under 10 NYCRR 900.8. Admissions to these otherwise vacant health care beds should allow additional revenue to be realized by the CCRC and help offset operating expenses.

An actuarial study with a valuation date of December 31, 2022 was produced with a report date of April 12, 2023. That study shows that the community is not in satisfactory actuarial balance as of December 31, 2022. There is a relatively large deficit of approximately \$15.5 million on the actuarial balance sheet as of December 31, 2022. The projections then show a positive actuarial surplus of approximately \$200,000 first emerging on December 31, 2024, with the community then being in satisfactory actuarial balance. The latter is based on the assumption that independent living occupancy will increase to 82 units by December 31, 2023, and then to 99 units by December 31, 2024. The study also shows positive cumulative cash flows in both 2023 and 2024, and all projection years thereafter, with that also based on the assumed increases in independent living occupancy levels in 2023 and 2024, and then ultimately to 126 units (about 85% occupancy) by the end of 2027.

TKG has requested through this application a regulatory consideration to allow the CCRC to come into compliance with the Statutory Operating Reserve (“Operating Reserve”) Requirement and Statutory Debt Service Reserve (“Debt Reserve”) Requirement by 2027. The Operating Reserve will initially be funded at \$250,000 and increased by 25% of the total requirement in each subsequent fiscal year. Similarly, the Debt Reserve will be initially funded at \$250,000 and increased by 25% of the total requirement in each subsequent fiscal year.

Conclusion:

Based on the materials submitted and the assumptions used, this application as proposed meets the requirements for approval as set forth in 10 NYCRR 900.4(b)(1).

Recommendations

Office of Attorney General

This application does not require Office of Attorney General review for issuance of a Certificate of Authority as per Public Health Law 4604(4)(e) since no aspect of this community is an equity arrangement for independent living.

Department of Financial Services

DFS recommends contingent approval. The recommendation is based on a review of the financial feasibility study, actuarial study, initial fee structure, proposed initial disclosure statements, and residency agreements for new residents, as provided by TKG. Based on the data presented in the CoA application, the proposed community will operate in compliance with the financial requirements of New York State Public Health Law Article 46 and DFS Insurance Regulation 140 (11 NYCRR 350) ("Regulation") as qualified below. The data presented in the CoA application are BCM and TKG's projections based on numerous assumptions, and actual results may vary significantly as events and circumstances occur. DFS makes its recommendation under its own assumption that all materials in the CoA application are, to the best of the Applicant's knowledge, accurate and represent a fair and complete portrayal of the information required for approval, and that all representations made by the Applicant's advisors, whether oral or written, are complete and accurate.

Regulatory Consideration:

1. TKG has committed to funding the minimum liquid reserves for operating expenses required pursuant to Regulation section 350.6 as follows. Initially, at the time of the closing of the transaction with Glen Arden, a reserve for operating expenses equal to at least \$250,000. On or before December 31, 2024 the reserve held will increase to at least 25% of the full level. On or before December 31, 2025, the reserve held will increase to at least 50% of the full level. On or before December 31, 2026, the reserve held will increase to at least 75% of the full level. Finally, on or before December 31, 2027, the reserve held will increase to be in full compliance (100% or more) of the required level according to the Regulation. The assets held in support of these reserves will satisfy the requirements for eligible liquid assets that are described in Regulation section 350.6.
2. TKG has committed to funding the minimum liquid reserves for interest and principal payments becoming due within the next 12 months under a mortgage loan, bond indenture or other long term financing ("Debt Service") of the community required pursuant to Regulation section 350.6 as follows. Initially, at the time of the closing of the transaction with Glen Arden, a reserve for Debt Service payments equal to at least \$250,000. On or before December 31, 2024 the reserve held will increase to at least 25% of the full level. On or before December 31, 2025, the reserve held will increase to at least 50% of the full level. On or before December 31, 2026, the reserve held will increase to at least 75% of the full level. Finally, on or before December 31, 2027, the reserve held will increase to be in full compliance (100% or more) of the required level according to the Regulation. The assets held in support of these reserves will satisfy the requirements for eligible liquid assets that are described in Regulation section 350.6.

Approval contingent upon:

1. TKG submitting an executed commitment regarding funding its minimum liquid reserves for operating expenses and Debt Service payments.
2. Submission of an administrative services agreement between the CCRC and BCM, as well as any other administrative services agreements, consulting agreements, etc. that the CCRC will enter into, which require approval by DFS and DOH.
3. Submission of documentation verifying the source of the required \$500,000 equity contribution for the acquisition of the Article 46 Continuing Care Retirement Community, acceptable to DFS and the DOH. The CCRC cannot be responsible for the repayment of any debt that any third parties and/or affiliated entities entered into to fund the equity contribution to the CCRC.

Approval conditional upon:

1. Assets of the CCRC are not to be used to collateralize the debt of another entity.
2. On or before December 31, 2027, the minimum liquid reserves for the Operating Reserve and Debt Reserve will be in full compliance (100% or more) of the required level imposed by Regulation. The assets held in support of these reserves will satisfy the requirements for eligible liquid assets that are described in Regulation section 350.6.
3. Assets used to meet the requirement of the Operating Reserve fund must be available to pay operating expenses, refund expenses, and taxes and insurance expenses related to the capital assets of the community should the operating revenue be insufficient for these purposes pursuant to Insurance Regulation 140 (11 NYCRR 350.6(a)(2)(ii)(c)). No third parties, including the Bond Trustee, shall encumber or otherwise restrict access to assets used to meet the Operating Reserve fund's requirements.
4. Submission of an updated financial feasibility study, acceptable to DFS, should the study require revisions when final financing occurs.
5. Monthly financial reporting to DFS and the DOH no later than 30 days after the close of the month until at least December 31, 2027 as to the status of the following:
 - a. Increase/Decrease in ILU occupancy with details on contract type.
 - b. Performance against key financial indicators, including Days Cash on Hand, and Debt Service Coverage Ratio.
 - c. Other enhanced reporting as deemed necessary by DFS and DOH to ensure compliance with the terms and conditions of this approval.
6. Submission of the following regarding the financing of the CCRC:
 - a. final term sheet;
 - b. resolutions approving the issuance of the bonds;
 - c. preliminary bond prospectus;
 - d. bond covenants to be included in the proposed bonds; and
 - e. all loan agreements.

Department of Health

The DOH has recommended approval based on a review of the materials presented in this application. The material presented in the application indicates that the proposed community will operate in compliance with New York State Public Health Law Article 46 and associated regulations unless otherwise noted in regulatory consideration sections. The Department makes its recommendation under the assumption that all materials in the application are accurate and represent a fair and complete portrayal of information required for approval.

Regulatory Consideration:

TKG is approved under 10 NYCRR 900.8(b)&(c) to allow the CCRC to provide, for a period of seven years, skilled nursing and enriched housing services to persons who are not residents of the community. It is expected that the Applicant will oversee the occupancy of the health care beds to ensure that these services are available to CCRC residents should they need them

Approval contingent upon:

None.

Approval conditional upon:

1. Payment to the DOH for the 2020 and 2021 outstanding annual fee for Glen Arden CCRC will be made at closing of the transaction.
2. TKG must take operational control of the Skilled Nursing and Enriched Housing beds through the approvals obtained in certificate of need applications and obtaining operating certificates for the health care facilities.
3. Licensed skilled nursing and enriched housing beds will operate under the Public Health Law Article 46 CoA and shall be surrendered should the CoA be revoked, surrendered, or invalidated in any way.
4. Adherence to the terms of regulatory considerations set forth as part of this approval.
5. Annual reporting to the DOH of the projected CCRC resident need for Skilled Nursing and Enriched Housing Units, demonstrating that the need for these services will not be jeopardized through admission of non-residents.

Council Action Date:

May 11, 2023

<h2>Attachments</h2>

- A. Examination of a Financial Projection and Market Study (Feasibility Study)
- B. Organizational Charts
- C. Proposed Residency Agreements
 - Type A Declining Balance Residency Agreement
 - Type C Declining Balance Residency Agreement
 - Type C 80% Refundable Residency Agreement
- D. Disclosure Statement to the Residency Agreements
- E. Standard Information Sheet