

BEFORE THE
**INSURANCE COMMISSIONER OF
THE DISTRICT OF COLUMBIA**

Re: Report on Examination – **The Army Distaff Foundation** as of December 31, 2021

ORDER

An Examination of **The Army Distaff Foundation** as of December 31, 2021 has been conducted by the District of Columbia Department of Insurance, Securities and Banking (“the Department”).

It is hereby ordered on this 11th day of March 2024, that the attached financial condition examination report be adopted and filed as an official record of this Department.

Pursuant to Section 31-1404(d)(1) of the D.C. Official Code, this Order is considered a final administrative decision and may be appealed pursuant to Section 31-4332 of the D.C. Official Code.

Pursuant to Section 31-1404(d)(1) of the D.C. Official Code, within 30 days of the issuance of the adopted report, the Company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related order.

Pursuant to Section 31-1404(e)(1) of the D.C. Official Code, the Department will continue to hold the content of the report as private and confidential information for a period of 10 days from the date of this Order.



Philip Barlow
Associate Commissioner

**REPORT ON EXAMINATION
THE ARMY DISTAFF FOUNDATION, INC.
AS OF
DECEMBER 31, 2021**

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Washington, D.C.
November 27, 2023

The Honorable Karima M. Woods
Commissioner
Department of Insurance, Securities and Banking
Government of the District of Columbia
1050 First Street, N.E., Suite 801
Washington, D.C. 20002

Dear Commissioner Woods:

In accordance with the provisions of Section 44-151.13 of the District of Columbia Official Code, the Department of Insurance, Securities and Banking (“Department”) performed a statutory financial examination of

The Army Distaff Foundation, Inc.

hereinafter maybe referred to as the “Facility.” The administrative office of the Facility is located at 6200 Oregon Avenue, N.W. Washington, DC 20015, and the following Examination Report (“Report”) is hereby respectfully submitted.

SCOPE OF EXAMINATION

This examination (“Examination”), covering the period from January 1, 2016, to December 31, 2021, including any material transactions and/or events noted occurring subsequent to December 31, 2021, was conducted by examiners of the Department. The District of Columbia Department of Health (“DOH”) has primary oversight responsibility for the certification and quality of care standards and the operation of the Facility’s assisted living, nursing, and skilled nursing component of the organization. Because the Continuing Care Retirement Communities (“CCRC”) resident contracts include a health care guarantee (classified as an insurance model), the Department issues a Certificate of Authority, the approval and ongoing oversight of these communities, including the review of annual Financial disclosure statements, Residency Agreements, refund provisions, and evaluation of the financial feasibility of CCRCs licensed in the District of Columbia.

The Examination was conducted in accordance with examination policies and standards established by the Department consistent with the provisions of Chapter 1A of Title 44, ‘Continuing Care Retirement Communities Act of the District of Columbia, as well as the guidance contained in the Financial Accounting Standards Board (FASB) accounting standard updates (ASU) Chapter 14 “Financial Accounting and Reporting by Continuing Care Retirement Communities” of the American Institute of Certified Public Accountants (AICPA) Health Care Audit and Accounting Guide, and

Actuarial Standard of Practice #3 (ASOP 3) “Practices Related to Continuing Care Retirement Communities” of the American Academy of Actuaries.”

All accounts and activities of the Facility were considered in accordance with the risk-focused examination process. This may include assessing the principles used and significant estimates made by management, an evaluation of the overall financial statement preparation, a review of the business policies and practices, and verification and evaluation of assets and liabilities of the Facility. In planning and conducting our examination, we gave consideration to the concepts of materiality and risk, and our examination efforts were directed accordingly. The Examination does not attest to the fair presentation of the financial statements included herein. If, during the course of the Examination, an adjustment is identified and considered material, the impact of such adjustment will be commented upon separately in this Report following the Facility’s financial statements. This Examination will not cover market conduct-related areas that would typically include underwriting, advertising and sales material, policyholder services, producer licensing, claim settlement practices, and complaint handling.

This Report includes significant findings of facts, as mentioned in Section 31-1402 of the Code. There may be other items identified during the examination that, due to their nature (e.g., subjective conclusions, proprietary information, etc.), are not included within the Report but were separately communicated to the Facility and/or other regulators.

The Facility was audited annually by an independent public accounting firm, BDO, USA LLP (BDO), for the years 2020 through 2021 and by Hertzbach & Company, P.A., for the years 2016-2019. The firms expressed an unmodified opinion on the financial statements of the Facility for the Calendar years 2016 through 2021. We placed substantial reliance on the audited financial statements for calendar years 2016 through 2020 and consequently performed minimal testing for that period. We concentrated our examination efforts on the year ended December 31, 2021. We reviewed the working papers prepared by BDO related to the audit for the year ended December 31, 2021, and directed our efforts to the extent practical to those areas not covered by the firm’s audit.

SUMMARY OF SIGNIFICANT FINDINGS

Financial Condition:

The Facility has an accumulated deficit on its balance sheet, and it has historically recognized significant losses over the past several years, including a loss of \$9.1 million for the year ended December 31, 2020, which was exacerbated by the COVID-19 global health pandemic that created revenue losses contributing to the Facility’s inability to meet certain bank covenants.

The Facility’s financials for the fiscal year ending 2021 reflect improved solvency and improved financial position for the short term with a gain of \$1.2 million (primarily due to \$2.9 million in COVID funding received from the government and a \$3 million resident gift), including positive cash flows from operations in the amount of \$5.3 million and a net increase in total cash of \$5.5 million. Management is actively working to find an appropriate solution for its current financial conditions and amplify its services to improve operations and ultimately generate sufficient revenue and reduce costs through operational efficiencies to attain profitability.

Bank Loan Covenant – Forbearance agreement:

The Facility is operating under a forbearance agreement for certain missed bank loan covenants. The lender on the bond’s payable issued a default forbearance and reservation of right letter due to a shortfall of certain stipulated Days Cash on Hand (“DCOH”) requirements. Per Management, the forbearance remains in good standing currently under an extension that expires December 2023. The Facility will seek an additional 45 days prior to expiration if required. The bond includes a \$6.5 million line of credit that has not been utilized, and the bondholder has rescinded usage for the near term. For further discussion, see “Note 2. Bonds Payable, Net of Current Portion” to the financial statements of this Report.

Annual disclosure statement revisions:

D.C. Code § 44-151.07(a) requires, “Within 150 days following the end of each fiscal year, the provider shall file with the Commissioner a revised disclosure statement setting forth current information required.” In that regard, the Facility:

- Failed to produce timely and complete Annual Disclosure statements for four years under the exam period and delinquent in filing the required revised disclosure statement with the Department, as well as making available a current revised disclosure statement to its current and prospective residents contrary to the requirements of D.C. Codes §44–151.05 and § 44-151.07.
- Failed to produce timely and current certified audited financial statements contrary to D.C. Code §44-151.05(a)(10)
- Failed to produce a current and comprehensive report of actuarial opinion statement that estimates the capacity of the provider to meet its contractual obligations to the residents.

For further discussion, see the “Summary of Recommendations” section of this Report.

Exam delays:

The examiners experienced issues due to delays between our initial requests and subsequent response from management due to key staffing turnover issues at the Facility, including access to certain sr. management and board members, and receipt of incomplete information for various exam reviews and requests.

HISTORY

The Facility, also known as *Knollwood Military Life Plan Community*, is a 501 (c) (3) not-for-profit charitable organization established in 1959 and located in Washington, D.C. The Facility provides retirement housing, health care services, and other services designed to meet the physical, social, and psychological needs of primarily, elderly retired career military officers and their close relatives in return for an entrance fee at the time the resident enters the community as well as ongoing monthly fees. Over the years, the Facility expanded eligibility requirements to certain individuals with government employment history, including civilians.

The Facility's business model is as a Fee-for-Service (Type C) CCRC community on a single campus that includes 161 independent living units, 43 assisted living units, and 49 skilled nursing beds. The Facility offers several living options and levels of assistance. These include independent living, health care, priority admission to assisted living or nursing care, short-term rehabilitation/skilled nursing care, and specialized memory care or assistance with activities of daily life. There are written agreements effective for the life of the resident or for a specific period between the resident and the community, which offer a continuum of housing, services, and health care, all on one campus.

Residents who are accepted for admission to an independent living unit at the Facility are required to sign a Residency Agreement prior to occupancy. The Agreement contains all the terms and conditions regarding housing and continuing care to which both the resident and the CCRC institution agree. It defines the costs of benefits and services to be received by the resident, as well as the conditions required to live in the community.

Residence in a CCRC requires a significant financial commitment, and the cost is based on a variety of factors, including the size of the apartment chosen and the type of resident contract signed. Payments to a CCRC include a deposit or the total entrance fee for the apartment selected, and it mainly consists of two components: an entrance fee (a lump sum fee paid up-front) and a monthly fee.

MANAGEMENT AND CONTROL

Board of Directors:

The Facility’s Bylaws provide that the responsibility for the control and management of the business and affairs of the Facility is vested in the Board of Directors (“BOD”), composed of no less than eleven (11) and no more than fifteen (15) directors, of whom at least 30% shall be women. Directors duly elected and serving as of December 31, 2021, were as follows:

Name and Residence	Principal Business Affiliation
John M. Keane Washington, DC	Chairman of the Board of Directors Army Distaff Foundation, Inc.
Kathleen L. Martin St. Augustine, FL	Vice Chair of the Board Chair, Trusteeship and Governance Committee Chair, Strategic Plans and Operations Committee
Timothy P. McHale Alexandria, VA	President and CEO ADF and Knollwood
Paul W. Bricker Clifton, VA	Chief Operating Officer Army Distaff Foundation, Inc.
Gordy Schnable Fairfax, VA	Secretary
Diane James Clifton, VA	Associate Secretary / Acting Director of Finance Army Distaff Foundation, Inc.
Nelson M. Ford McLean, VA	Vice Chair of Treasury Chair, Finance and Audit Committee
Kimberly A. Kuryea Reston, VA	Chair, Fund Development Committee Sr. Vice President, General Dynamics
Edger E. Stanton, III Wilmington, NC	Board Member
Lois N. Callahan Washington, DC	Board Member, (Non-voting) President, Knollwood Resident Association

Anthony C. Funkhouser Williamsburg, VA	Board Member Retired
Leann Martin Fort McNair, DC	Board Member Volunteer, Army Spouse
Frank C. Pandolfe Reston, VA	Board Member CEO, Plan Global Strategies
Catherine L. Turley Palm City, FL	Board Member Associate Professor Emeritus School of Medicine and Services George Washington University
Patty George	Board Member Associate Dean of Faculty Research and Outreach National War College
Robert Royer, Esq. Washington, DC	Board Member, (Non-voting) Partner McPherson Group, LLP
James Michels Fort Belvoir, BA	Associate Executive Director Army Distaff Foundation, Inc.

The Bylaws require that the board elect a Chairman, two Vice Chairmen, one of whom shall be Vice Chairman-Finance, one of whom is Vice Chairman - Trusteeship and Governance, and a secretary and Treasurer from the serving Directors. The composition of the Board of Directors at December 31, 2021, was in compliance with the By-laws of the Facility.

Officers: (Key Personnel)

The following were Officers of the Facility and serving as of December 31, 2021:

Timothy P. McHale	President/Chief Executive Officer
Paul W. Bricker	Chief Operating Officer
Diane James	Interim Director of Finance
James Michels	Vice President of Advancement
Debra K. Schrag	Director of Marketing and Admissions

Jim Branham	Hall and Facilities Administrator
Gerri Flowers	Assisted Living Administrator
Felicia Anthony	Health Services Administrator

The Bylaws require the appointment of a Chief Executive Officer (CEO), Chief Operating Officer (COO), and Chief Financial Officer (CFO)/Assistant Treasurer. As of December 31, 2021, the role of CFO/Assistant Treasurer was vacant.

Committees:

The Facility’s Bylaws require the establishment of certain committees to fulfill the BOD’s governance and oversight responsibilities, carry out the required duties of the BOD, and make reports, recommendations, and otherwise advise the BOD. As of December 31, 2021, the Facility had established the following standing committees of the Board of Directors:

- Finance and Audit Committee
- Trusteeship & Governance Committee
- Strategic Plans and Operations Committee
- Fund Development Committee

Conflict of Interest:

The Bylaws require that whenever a director or officer has a financial or personal interest in any matter coming before the BOD, the affected person shall a) fully disclose the nature of the interest and b) withdraw from discussion, lobbying, and voting on the matter. Any transaction or vote involving a potential conflict of interest shall be approved only when a majority of disinterested directors determine that it is in the best interest of the corporation to do so.

Although the Facility had the required conflict-of-interest policy, our examination disclosed that conflict-of-interest questionnaires were missing for certain key employees and members of directors. Therefore, our examination was not able to reasonably ascertain whether there were any material conflicts of interest that may have existed during the examination period. See the “Summary of Recommendations” section of this Report for further discussion under the caption “Conflict of Interest.”

Corporate Records:

The recorded minutes of the Board of Directors and certain committees were reviewed for the period under examination. Based on our review, it appears the minutes documented the Facility’s

significant transactions and events, and the director approved those transactions and events. However, we made certain improvement suggestions and recommendations to the Facility regarding financial record-keeping and other procedures relating to its operations.

MANAGEMENT AGREEMENTS

The Facility has a Management Services Agreement entered into originally as of October 1st, 2014, and subsequently amended and replaced effective July 1, 2016, with The Wood Company, a wholly-owned indirect subsidiary of Sodexo Operations, LLC (“Sodexo”).

The agreement sets forth the terms and conditions upon which the Facility provides Sodexo the exclusive right to manage and operate certain services for residents, employees, visitors, and guests at the premises that include food and full dining services and integrated facility management services such as housekeeping/laundry and plant operations and maintenance services. The term of this agreement is ten (10) years (“Initial Term”). Commencing on August 1, 2016, and continuing through August 15, 2026.

TERRITORY AND PLAN OF OPERATION

The Facility conducts business in the District of Columbia as CCRC licensed pursuant to the Continuing Care Retirement Communities Act of 2004 (DC Official Code § 44-151.01 *et seq.*) as amended.

As indicated under the “History” section of this Report, the Facility provides three levels of housing facilities and services to elderly retired career military officers, their spouses, widows or widowers, and other relatives, certain federal government employees, and certain non-military people. To be eligible, one must be 62+, in good physical and cognitive health, and have financial resources to last their life expectancy. The Facility also provides benevolence support for residents who qualify for financial assistance or who run out of funds as a fulfillment of the organization’s mission and purpose.

The Facility provides a continuum of services with a wide range of housing, healthcare services, hospitality, and recreational/educational activities in one place/campus. It also provides meals, housekeeping, social and recreational programs, laundry service, repairs, and maintenance services, along with amenities such as transportation to outside events, use of a pool or gym, and other activities. Ancillary charges are not covered by the monthly service charge, and some amenities may require an additional fee. Assisted living and skilled nursing services are typically paid for per diem and at market rates. Admission for assisted living and skilled nursing, rehab, and memory care is open to the general public, with priority given to current residents.

Revenue is derived from services under various third-party payor programs, which include Medicare, Medicaid, and other third-party reimbursement sources. The Facility also received investment income, gifts/donations/contributions that are with and without donor restrictions.

ACCOUNTS AND RECORDS

The Facility’s general accounting records consisted of an automated general ledger and subsidiary ledgers designed for the Health Care Industry. The Facility’s accounting records, procedures, practices, and supporting data were reviewed to the extent deemed necessary. Based on our review, certain improvement suggestions and recommendations were made to the Facility regarding its financial record-keeping and other procedures relating to its operations.

The Facility’s Information Technology General Controls (“ITGC”) and General Application Controls (“GAC”) were also reviewed. Based on the scope of the Information Technology (“IT”) review, certain items were noted and discussed with the Facility. However, the review did not disclose any significant deficiencies in these records.

FINANCIAL STATEMENTS

The Examination does not attest to the fair presentation of the financial statements included herein. The following financial statements are based on the audited financial statements filed by the Facility with the Department and present the financial condition and results of operations as reported by the Facility for the period ending December 31, 2021. No adjustments were made to the statements filed with the Department as a result of this Examination.

The accompanying “Notes to Financial Statements” are an integral part of these financial statements.

Balance Sheet
Assets

Cash and cash Equivalents	\$ 5,912,301
Accounts Receivable - net	1,224,413
Investments, current portion	-
Current portion of pledge receivable	20,000
Prepaid expenses and other current asset	<u>47,524</u>
Total Current Assets	<u>7,204,238</u>
Property and equipment, net	<u>28,781,209</u>
Other assets	
Pledge receivable, net of current portion and discount	98,373
Investments, operating reserve	3,055,684
Deposits	<u>53,000</u>
Total Other Assets	<u>3,207,057</u>
Total Assets	<u><u>\$ 39,192,504</u></u>

Balance Sheet
Liabilities and Net Assets

Current liabilities

Accounts payable	\$ 621,549
Accrued Expenses	965,295
Current maturities of annuities payable	31,485
Current portions of dining contract commitment	118,750
Current maturities of loan payable	695,000
Medicare advance payment	167,604
Deferred income	<u>521,239</u>
Total Current Liabilities	<u>3,120,922</u>

Long-term liabilities

Bonds payable, unamortized debt issuance cost of \$388,799 (Note 2)	18,841,201
Annuities payable, net of current portion (Note 7)	89,275
Refundable admission fees, net (Note 3)	12,393,603
Deferred admission fees – net (Note 4)	16,997,864
Application fees (Note 4)	1,895,463
Dining contract commitment, net of current portion (Note 7)	404,699
Loan payable, net of current payable	405,749
Derivative financial instrument	<u>1,853,224</u>
Total Long-Term Liabilities	<u>52,881,078</u>
Total liabilities	<u>\$ 56,002,000</u>

Net assets (deficit)

Net assets (deficit) without donor restrictions (Note 5)	(17,110,682)
Net assets with donor restrictions (Note 5)	<u>301,186</u>
Total net assets (deficit)	<u>(16,809,496)</u>
Total liabilities and net assets (deficit)	<u>\$ 39,192,504</u>

Statement of Activities and Changes in Net Assets

Revenue and Gains

Revenue from admission fees	\$	1,578,589
Independent living housing and services		7,972,183
Assisted living housing and services		3,465,929
Health services		6,219,286
Contributions, grants, and pledges (Note 6)		3,974,795
Investment return, net of investment expense		339,882
Miscellaneous revenue		356,789
Total Revenues		<u>23,907,453</u>

Operating Expenses

Payroll and related expenses		10,748,827
Employee benefits		1,360,439
Operations		2,954,484
Utilities		955,521
Contract services		5,568,550
Repairs and maintenance		727,368
Insurance		603,570
Nursing provider tax		498,775
Interest		689,533
Subtotal		<u>24,107,067</u>
Depreciation and amortization		<u>2,719,121</u>
Total Expenses		<u>26,826,188</u>
Total operating loss		<u><u>(2,918,735)</u></u>

COMPARATIVE FINANCIAL POSITION OF THE FACILITY

The comparative financial position of The Facility for the five-year period ended December 31, 2015, is as follows:

	2016	2017	2018	2019	2020	2021
Assets	\$ 50,462,039	\$ 48,431,935	\$ 46,302,407	\$ 45,430,630	\$ 39,104,880	\$ 39,192,504
Liabilities	47,512,211	47,077,486	48,423,363	53,687,804	56,448,725	56,002,000
Net (deficit) assets	2,949,828	1,354,449	(2,120,956)	(8,257,174)	(17,343,845)	(16,809,496)
Total Revenues	23,077,364	23,298,282	22,469,778	22,408,728	20,844,619	23,907,453
Total expenses	24,193,188	24,893,661	25,945,183	28,544,946	27,794,995	26,826,188
Total Gain/(loss)	(1,115,824)	(1,595,379)	(3,475,405)	(6,136,218)	(6,950,376)	(2,918,735)

NOTES TO FINANCIAL STATEMENTS

Note 1. Obligation to Provide Future Services.

A continuing-care retirement facility expects to provide services and the use of facilities to individuals over their remaining lives under continuing-care contract agreements. If the advance fees and periodic fees charged are insufficient to meet the costs of providing future services and the use of facilities, the continuing care retirement facility should record a liability based on actuarial assumptions (such as mortality and morbidity rates), on estimates of future costs and revenues, and on the specific facility’s historical experience and statistical data. The liability related to continuing-care contracts should be the present value of future net cash flows, minus the balance of unamortized deferred revenue, plus depreciation of facilities to be charged related to the contract, plus unamortized costs of acquiring the related initial continuing-care contracts, if applicable. There was no actuarial estimate completed at December 31, 2021, of the Facility’s obligation to provide future services to current residents. (see comments under Audited Financial & Actuarial Statements).

Note 2. Bonds Payable, Net of Current Portion:

The Facility obtained tax-exempt bond financing of \$24,655,000 through the District of Columbia. Under the terms of the agreement, the District of Columbia issued Health Facility Refunding Revenue Bonds Series 2006 and loaned the proceeds from the bond issuance to the Facility in exchange for a promissory note. The loan proceeds were to be used to refinance existing debt and to finance and reimburse the costs of a project to construct a special care unit on the property of the Facility. The bonds are secured by a security interest in the revenues, receipts, and real and personal property owned or to be owned by the Facility. Under the terms of the loan agreement, the Facility is required to make monthly payments of principal and interest at a variable rate of 75% of LIBOR plus 1.4% (1.58% at December 31, 2015) through maturity on January 1, 2036. The Facility is required to satisfy certain measures of financial performance and comply with specific covenants as outlined in the loan agreement. The assets that are covered in the bond covenant include escrow funds (see Comment Titled Escrow, Collections of Deposits).

Note 3. Refundable Admission Fees.

Application fees are required to be paid by potential residents prior to residency. These fees are refundable up until the time of residency, at which time they are recognized as revenue. The portion of these fees that has not yet been recognized as revenue is included in this Report's balance sheet as application fees.

The Facility charges various levels of admission fees. These admission fees are paid upfront and are refundable on a graduated percentage, including a 90% Refundable contract, a 45% Refundable contract, and a Standard Fee-For-Service Contract that decreases refundability over a 36-month period. The refund is paid to the resident or the resident's estate if the contract is terminated or upon the resident death.

Admission fee revenue is recognized as the total deferred admission amount is amortized over the estimated stay of the resident. The portion of admission fees that are refundable are recorded in the statements of financial position as refundable admission fees.

Note 4. Deferred Admission Fees – net.

Admission fees are placed in the escrow fund until the applicant has resided in the facility for a period of six months. At that time, the fees are transferred to the deferred admission fund, and revenue is recognized as the total deferred admission amount is amortized over future periods based on the estimated stay by the residents. The portion of admission fees that are non-refundable but not yet recognized as revenue are recorded in the balance sheet as deferred admission fees.

Note 5. Net Assets:

Net Assets classified as temporarily restricted include pledged receivables and the Chapel Fund used to pay for chapel-related expenses. Contributions to the pledged receivables are to be used at the discretion of the Facility's management. Temporarily restricted funds may only be utilized in accordance with the purposes established by the sources of such funds and are in contrast with unrestricted funds over which the Board retains full control to use in achieving any of its purposes.

The Facility periodically accepts contributions under an annuity plan. Those funds are then invested with an investment bank and reported as part of investments on the statements of financial position. Charitable gift annuity assets were \$276,932 for the year ended December 31, 2021. The income earned on those funds, along with a portion of the principal, is returned to the resident over a designated period of time. In turn, a portion of the principal is retained by the Facility and recognized as contribution income. Annuities payable represent the liability to the annuitants, which has been discounted to its present value.

Note 6. Paycheck Protection Program (the "PPP") Loan:

During 2020, the Facility received loan proceeds in the amount of \$2,239,590 pursuant to the Paycheck Protection Program (PPP), administered by the U.S. Small Business Administration (SBA). The PPP was authorized in the CARES Act (as amended by the Economic Aid Act on December 27, 2020, and the American Rescue Plan Act on March 11, 2021). The Loans were evidenced by a promissory note in favor of the Lender, which bears interest at the rate of 1.00% per annum.

Funds from the PPP Loans are to be used only for payroll and related costs, costs used to continue group health care benefits, rent, utilities, and interest on other debt obligations that were incurred prior to February 15, 2020 (the "Qualifying Expense"). Under the terms of the PPP Loans, certain amounts thereunder can be forgiven if they are used for Qualifying Expenses as described in and in compliance with the CARES ACT.

As of December 31, 2021, the Facility has expended all of the PPP funds received on Qualified Expenses and believes that it met all of the conditions attached to the PPP, and therefore, applied for forgiveness. On June 25, 2021, the SBA notified the Facility that the PPP loan had been fully forgiven. As a result, the Facility recognized PPP loan forgiveness in the amount of \$2,239,590 during the year ended December 31, 2021.

The SBA reserves the right to audit any PPP loan, regardless of size. These audits may occur after forgiveness has been granted. In accordance with the CARES Act, the Facility is required to maintain its PPP loan documentation for six years after the PPP loan was forgiven or repaid in full and to provide that documentation to the SBA upon request.

Note 7. Other Commitments:

In 2016, the Facility entered into a dining contract with a third-party vendor (Sodexo), which calls for the vendor to advance the Facility the cost of \$1,000,000 of dining hall renovations. During 2018, the Facility received \$150,000 from the vendor for certain renovations to the bistro. The repayment of the advances has been built into the monthly dining contract fee. The 2016 advance is non-interest bearing and due in equal monthly installments over a ten-year period ending July 31, 2026. The 2018 advance is non-interest bearing and due in equal monthly installments ending April 1, 2026. If the dining contract is terminated prior to the repayment period, the outstanding balance will be due as of the termination date. The outstanding balance at December 31, 2021 was \$523,449.

On January 1, 2012, the Facility signed a construction contract for the renovation of its skilled care facilities with the terms of the contract stating that construction was to be substantially completed no later than April 2013 and the cost of the construction not to exceed \$3,129,479.

On January 24, 2013, the Facility signed a contract for the installation of fire protection systems for its skilled care and assisted living facilities. The cost of the installation was not to exceed \$4,113,300.

SUBSEQUENT EVENTS

During the course of fieldwork and subsequent to the examination date, December 31, 2021, the following significant subsequent events were noted.

On February 1, 2022, the lender on the bond payable issued a default forbearance and reservation of rights letter. Under the terms of the letter, the lender agrees, subject to certain terms and conditions, to forebear from pursuing any remedies, legal or equitable, against the Facility during the forbearance period through June 30, 2022. The Facility received an additional forbearance extension on June 9, 2022, for the period through December 31, 2022. Further, on December 1, 2022, the lender issued a third default forbearance for the period through June 30, 2023.

The Facility made a change in its 2023 budget to eliminate the 0% Entrance Fee option for the smaller units for new prospects and forward. Per management, the existing priority list members as of December 31, 2022, would be grandfathered to choose that option for one calendar year.

During 2021 and 2022, the Facility filled various vacant or additional positions and hired the following individuals as part of its senior leadership team: Remi Ackerman, Executive Director,

Sonja Brooks, Director of Finance. The Facility also changed the job titles of the Chief Operating Officer and Chief Financial Officer to “Executive Director” and “Director of Finance” to align with the industry title/role convention. Management was made aware of these inconsistencies with the Bylaws of the Facility.

SUMMARY OF RECOMMENDATIONS

D.C. Code §44-151.05 (a) (9) – Annual Operating Reserve:

Pursuant to D.C. Code § 44-151.08(a), continuing care facilities must maintain operating reserves of a minimum of 20% of projected operating costs, less depreciation and amortization plus debt service. The operating reserves must be funded by cash, commercial paper, or investment-grade securities.

Furthermore, D.C. Code 44-151.08(f) states that “Operating reserves shall only be released upon the submission of a detailed request from the provider or facility and shall be approved by the Commissioner. The request shall be submitted in writing for review by the Commissioner at least 10 business days prior to the date of withdrawal.”

During the examination period, management was not able to produce records of the proper earmarking and maintenance of this required minimum operation reserve, nor did the Disclosure Statements provide the required information for the period covered by the examination or clearly identify the location of the language that meets this requirement.

Recommendation:

The Facility should maintain an operating reserve at all times for continuing care residents pursuant to D.C. Code § 44-151.08(a) and disclose the Operating Reserve properly in its Annual Disclosure statement revisions. The Facility should also maintain appropriate records for the Operation Reserve calculations and support for inspection.

Within sixty (60) days of the date of this Report, the Facility shall submit to the Department evidence of the maintenance of the required Operating Reserve that is compliant with D.C. Code § 44-151.08(a), including all supporting documentation.

D.C. Code §44-151.05 (a) (9) – Escrow, Collection of Deposits:

Pursuant to D.C. Code § 44-151.09(a), all continuing care facilities both prior to and after opening shall maintain escrow accounts for the total amount of any entrance fee, or any other fee or deposit that may be applied toward the entrance fee. It was noted that as part of the bond covenants

described in Note 2 of this Report, the escrow funds are being used as security for the bond, along with other property, under the terms of the loan agreement.

D.C. Code §44-151.05 (a) (9) requires disclosure of “The provisions that have been made or shall be made to provide reserve funding or security to enable the provider to perform its obligations fully under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, the manner in which these funds shall be invested, and the names and experience of any individuals in the direct employment or on the board of directors of the provider who shall make the investment decisions...”

However, the Facility was not able to provide the examiner with documentation and records of the appropriate establishment and maintenance of segregated escrow funds in accordance with D.C. Code § 44-151.09(a). Furthermore, the Facility’s Disclosure Statement revision did not clearly disclose or contain this required disclosure information for the period covered.

Recommendation:

In compliance with D.C. Code § 44-151.09(a), the Facility should establish appropriate segregated escrow resident trust fund accounts to safeguard individual residents' funds from other assets marked as assets whose use is limited. The escrow funds shall be restricted and not be used as security for revenue bond collateral under the terms of the loan agreement(s).

Within ninety (90) days of the date of this Report, the Facility shall submit evidence of the establishment of such escrow accounts and proper segregation of residents’ funds to the Department.

D.C. Official Code § 44–151.06 – Residency Agreement:

DC Official Code § 44–151.06 provides specifications with respect to required terms and provisions of CCRC standard contracts for continuing care services. During the exam period, the Facility’s standard contracts were reviewed, and certain deficiencies and non-compliant areas were identified. Specifically, the following provisions were not expressly included and/or omitted from the standard residency contracts:

- Pursuant to D.C. Code § 44-151.06 (a) (4), A provider shall not deduct from a refund due for a rescinded or canceled contract non-refundable fees set forth in the rescinded or canceled contract or any service charge if the contract performance by the resident becomes impossible due to death or morbidity, and the resident did not occupy a living unit in the facility.
- The manner by which the Facility may adjust periodic charges or other recurring fees and the limitations on these adjustments pursuant to D.C. Code § 44-151.06 (b)(6).
- The policy of ownership of pets pursuant to D.C. Code § 44-151.06 (b)(12).

- Pursuant to D.C. Code § 44-151.06 (b)(14), the procedures the residents shall follow to file a grievance and the procedures the provider shall follow to resolve the grievance, and the resident shall not be subject to retaliatory action for filing a grievance; and the right of residents to bring a civil action to recover for injury resulting from violations of this chapter and its regulations.
- Pursuant to D.C. Code § 44-151.06 (f), the resident's continuing care contract shall permit the resident to identify the resident's estate or the person or persons to whom payment shall be made if a refund is due by reason of the resident's death.

Recommendation:

The Facility should review its standard CCRC contracts in their entirety and ensure that all required CCRC standard contract provisions pursuant to the DC Code are adequately and clearly covered and provided in its CCRC contracts. Within sixty (60) days of the date of this Report, the Facility shall submit revised fully complaint standard residence agreement contracts with the Department.

D.C. Code § 44-151.07 – Annual Disclosure Statement:

During the examination period, the Facility failed to produce and submit its required CCRC Disclosure statement revision in a complete and timely manner to the Department since its last filed statement for the fiscal year ending in 2019.

Upon requests from the Department, the Facility's management submitted the 2021 annual Disclosure statement with various excerpt pages without any supportive narrative or an executive summary that covers and/or augments the required areas of the Disclosure Statement provisions, which was difficult to follow and locate the disclosure of the required information pursuant to D.C. Code §44-151.05(a) (6) through 16) was not expressly stated/discussed or deficiently detailed.

Furthermore, the submitted disclosure information contained outdated information contrary to the requirement pursuant to D.C. Code §44-151-07(b) that only the most recently recorded disclosure statement, with respect to a facility, and in any event, only a disclosure statement dated within one year plus 150 days prior to the date of delivery, shall be considered current for purposes of the law or delivery pursuant to the CCRC law.

Recommendation:

Within ninety (90) days of the date of this Report, the Facility shall produce and file with the Department a comprehensive, complete, and timely disclosure statement that comports with the requirements of the CCRC law for all the years under the examination period and on a going annual basis that addresses each component area of section §44-151-05 of the Code, which some of these include multiple sub-requirements.

Additionally, the Annual Disclosure statement revision shall be appropriately categorized, organized, and prepared following a standardized format that provides a table of contents and a brief narrative or executive summary of each component area required per D.C. Codes §44–151.05 and § 44-151.07 with all the mandatory enclosures/appendices of exhibits and tables that may provide detailed information.

Furthermore, the Facility shall include, where applicable, current up-to-date information and provide this information as required in its annual Disclosure revisions pursuant to the DC Code and CCRC laws and regulations. It is further recommended that the Facility cross-reference the requirements of the law to the Disclosure Statement prepared before submission.

D.C. Codes §§44–151.05 & 44-151.07 Disclosure to Residents:

Pursuant to D.C. Codes § 44-151.07 (a), Within 150 days following the end of each fiscal year, the provider shall file with the Commissioner a revised disclosure statement setting forth the current information required. The provider shall also make the revised disclosure statement available to all the residents of the facility.

Furthermore, D.C. Codes § 44-151.05 (a), states that “At least 30 days prior to the execution of a contract to provide continuing care, or 30 days prior to the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a current disclosure statement to the person with whom the contract is to be entered into. This 30-day period may be waived at the sole request of the prospective resident.”

During the examination period, the Facility failed to make available a current revised Disclosure statement to its current and prospective residents of the Facility, contrary to the requirements of the law. The last available revised disclosure statement made available was for the fiscal year ending period as of 2018.

Recommendation:

Within ninety (90) days of the date of this Report, the Facility should produce and make available all the required Annual Disclosure statement revisions and mandated enclosures to its current and prospective residents in a clear, timely, and complete manner in accordance with the applicable CCRC laws and regulations. The Facility should also submit evidence of compliance with these provisions to the Department.

D.C. Code §44-151.05 – Audited Financial & Actuarial Statements:

D.C. Codes §§ 44–151.07 and 44–151.05(a)(10) require the timely filing of a revised Disclosure Statement annually to the Department and its current and prospective residents that includes

financial statements of the provider, certified by an independent certified public accountant as of the end of the most recent fiscal year. However, no certified financial statements were completed or furnished with the Department or residents for the years 2020 and 2021 in a timely manner required for the respective calendar years. The Facility completed and provided its audited financial statements and actuarial study reports for these periods subsequent to the examination period during 2023.

Additionally, contrary to the requirements of the D.C. Code pursuant to § 44–151.05, no current or comprehensive actuarial evaluation estimating the capacity of the provider to meet its contractual obligations to residents was completed for inclusion in the required Disclosure Statement revisions covering the exam period. Furthermore, the Facility’s methodology for calculating deferred revenue is done using LifeCalc software, however, the Facility has not used updated LifeCalc calculations and relied on historical figures. Through detailed actuarial analyses, management and residents can access the most authoritative indication of whether a CCRC will remain solvent while fulfilling its contractual obligations to current and future residents. Due to the long-term nature of CCRC contracts and uncertainties regarding health care and refund guarantees, sound financial management requires the integration of actuarial methods into CCRC financial projects. Timely actuarial valuations provide an early warning of deficiencies in pricing policies, alerting management to the potential of a financial crisis.

Recommendation:

The Facility shall complete and file its revised annual disclosure statement in a timely and complete form and format that includes audited financial statements as of the end of the most recent fiscal year certified by an independent certified public accountant and a comprehensive actuarial evaluation report completed at a minimum within the prior two (2) years of the date of the disclosure statement as required pursuant to the applicable D.C. law.

Within one hundred twenty (120) days of the date of this Report, the Facility shall conduct a comprehensive actuarial evaluation estimating the capacity of the provider to meet its contractual obligations to residents and whether it carries an adequate actuarial balance to meet projected obligations. The comprehensive actuarial report shall be submitted to the Department.

DC Code §44-151.05 (a) (12), 5-Year Forecast Statement:

DC Code §44-151.05 (a) (12) requires the Facility to submit a certified financial forecast statement annually as part of its Disclosure statement that encompasses financial forecasts for the Facility for the next 5 years, including a balance sheet, a statement of operations, a statement of cash flows, and a statement detailing all significant assumptions, compiled by an independent certified public accountant.

Contrary to the requirement, it was noted that the Facility has not filed such a statement since its last filed statement for years ending December 31, 2019. This issue was brought to the attention of current management, and it was indicated that they are working with their external auditor, BDO, to complete the 5-year Forecast.

Recommendation:

Within ninety (90) days of the date of this Report, the Facility shall come into compliance with DC Code §44-151.05 (a) (12) and furnish the required certified five-year forecast statement to the Department and file this on an annual basis in conjunction with its revised annual disclosure statement in a timely and complete form. This should include the requirements of Title 26A DCMR § 8206 and DC Code §44-151-05 (14) (B), which describes the 9 detailed requirements for the Narrative Disclosure.

D.C. Code §44-151-07 - Narrative Statement:

Pursuant to DC. Code § 44–151.07(a)(1) & (2), “The revised Disclosure Statement shall include a narrative describing any material differences between: (1)(A) The forecast statements of revenues and expenses and cash flows or other forecast financial data filed pursuant to law as a part of the disclosure statement filed most immediately subsequent to the start of the provider’s most recently completed fiscal year; and (B) The actual results of operations during that fiscal year; and (2) The revised forecast statements of revenues and expenses and cash flows or other forecast financial data being filed as a part of the revised disclosure statement filed at any other time if, in the opinion of the provider, revision is necessary to prevent an otherwise current disclosure statement from containing a material misstatement of fact or omitting a material fact required to be stated therein.”

Although the Facility has historically recognized significant fluctuations year-over-year as reported on its balance sheet and P&L financial statements, no accompanying explanatory support statements were submitted contract to the requirements of the law.

Recommendation:

Within ninety (90) days of the date of this Report and on an annual basis, the Facility should file a detailed narrative statement and support akin to a management discussion and analysis document with the Department describing any material differences between projected and actual performance as required by DCMR Sections 26-8208.2 & 8208.3 and DC. Code § 44–151.07(a)(1) & (2). At a minimum, this shall include all material differences between forecast documents and actual financial performance with regard to assets, liabilities/reserves, revenue, and expenses that may significantly deviate from the forecasted values. All deviations resulting in any significant increase/decrease in actual net assets and increased/decreased operational gains/losses over the forecasted period.

D.C. Official Code § 44–151.05 (a) (3) (B) – Affiliated Relationships:

D.C. Code §44-151.05 (a) (3) (B) requires disclosure of affiliated relationships between the (a) Provider (and its members) and those key persons involved in the management of the CCRC and (b) those professional service firms or other entities that provide services, goods or leases to the CCRC.

However, contrary to the Code, affiliated relationships between the Provider (and its members) and those key persons involved in the management of the CCRC were not properly identified and/or disclosed in the filed Disclosure statements revisions.

Recommendation:

The Facility should consult the regulation in its entirety and appropriately disclose affiliated relationships between the (a) Provider (and its members) and those key persons involved in the management of the CCRC and (b) those professional service firms or other entities that provide services, goods or leases to the CCRC. This information shall be submitted in complete and accurate format to the Department with all filing of revised annual disclosure statements specified pursuant to D.C. Codes §§44–151.05 & 44-151.07.

D.C. Code 44-151.05(b) - Cover Page:

Pursuant to D.C. Code 44-151.05(b), “The cover page of the Disclosure Statement shall state, in a prominent location and in boldface type, the date of the disclosure statement, the last date through which that disclosure statement may be delivered if not earlier revised, and that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by this chapter but that the disclosure statement has not been reviewed or approved by any government agency or representative to ensure accuracy or completeness of the information set forth.”

The CCRC Cover page submitted by the Facility dated April 26, 2023, with the revised 2021 Annual Disclosure statement appeared deficiently detailed and did not clearly and fully comport with the required language per the D.C. Code, which states “ in a prominent location and in boldface type, the date of the disclosure statement, the last date through which that disclosure statement may be delivered if not earlier revised, and that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by this chapter but that the disclosure statement has not been reviewed or approved by any government agency or representative to ensure accuracy or completeness of the information set forth.”

Recommendation:

The Facility should include a cover page that complies with the CCRC Annual Disclosure Statement requirements, including the disclosure that it has not been reviewed or approved by any government agency, the fiscal year it covers, and the date the Disclosure Statement intends to cover and remain effective (typically till the next required revision date, see §44-151.07). The Disclosure Statement cover page effective dates shall be commensurate with the D.C. Code §44-151.07 (a) requirement for CCRCs to submit a revised Disclosure Statement within 150 days following the end of the fiscal year. This information shall be submitted in complete and accurate format to the Department with all filing of revised annual disclosure statements pursuant to D.C. Codes §§44-151.05 & 44-151.07.

D.C. Code 44-151.05(a)(2) - Business address for officers and directors:

In the revised 2021 Annual Disclosure Statement submitted by the Facility, the names and titles of certain Board of Directors and officers were provided, which described their titles and the role they play in the CCRC. However, no business address was specifically provided beyond the CCRC's address.

Contrary to D.C. Code 44-151.05(a)(2), except for the bios for the President and CEO, no description of these persons' interests in or occupations with the Provider was provided. §44-151.05(a)(2) of the D.C. Code requires that "The names and business addresses of the officers, directors, trustees, managing general partners, any person having a 10% or greater equity or beneficial interest in the provider and any person managing the facility on a day-to-day basis, and a description of these persons' interest in or occupations with the provider" is required.

Recommendation:

The Facility shall produce information that clearly describes the required information and comply with D.C. Code 44-151.05(a)(2), including whether any of the Facility's directors, management, and employees have any equity, beneficial, or financial interest in the Provider's affairs. This information shall be submitted in complete and accurate format to the Department with all filing of revised annual disclosure statements pursuant to D.C. Codes §§44-151.05 & 44-151.07.

DC Code 44-151.05(3)(a)&(b) – Business Experience:

DC Code 44-151.05(3)(a)&(b) of the required Disclosure statement states that "(A) A description of the business experience, if any, of this person, in the operation or management of similar facilities; (B) The name and address of any professional service firm, association, trust, partnership, or corporation in which the person has a 10% or greater interest and which it is presently intended shall currently or in the future provide goods, leases, or services to the facility, or to residents of the facility, including a description of the goods, leases, or services;"

Contrary to the requirements of § 44–151.05(3)(a) &(b) of the D.C. Code, out of the 14 key persons listed under “Board of Directors and Officers,” only a brief bio was submitted for the President and CEO, which provided some discussion of their business experience in the operation or management of similar facilities.

Recommendation:

The Facility shall provide complete information for all key individuals that clearly captures the required information comporting to the requirements of the law pursuant to §44-151.05(3)(a) & (b).

This information shall be submitted in complete and accurate format to the Department with all filing of revised annual disclosure statements pursuant to D.C. Codes §§44–151.05 & 44-151.07.

D.C. Code §44-151.05(a)(3) (C) - Background information:

D.C. Code §44-151.05(a)(3)(C) requires the following information about various categories of people responsible for the CCRC, “A description of any matter in which the person:

(i) Has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(ii) Is subject to a currently effective injunctive or restrictive court order, or within the past 5 years, had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, if the order or action arose out of or related to business activity of health care, including actions affecting a license to operate a foster care facility, nursing home, retirement home, home for aged, or facility subject to this chapter or a similar law in another state;”

The required disclosure and details in §44-151.05(a)(3)(c) were not provided or completed covering the examination period.

Recommendation:

It is recommended that the Annual Disclosure Statement revisions comport to the requirements of the law and include the required disclosure statement attesting whether matters in which any individuals with managerial control over the Provider has been convicted of a felony, pleaded nolo contendere to a felony charge or held liable or enjoined in a civil action by final judgment for a felony or civil action involving fraud, embezzlement, fraudulent conversion or misappropriation of property, or is subject to a currently effective injunctive or restrictive court order, or within the

past five years, had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department which arose out of or was related to business activity of health care, including actions affecting a license to operate a foster care facility, nursing home, retirement home, home for the aged, or facility subject to Title 44, Subtitle I, Chapter IA of the D.C. Official Code or a similar law in another state.

This information shall be submitted in complete and accurate format to the Department with all filing of revised annual disclosure statements pursuant to D.C. Codes §§44-151.05 & 44-151.07.

DC Code §44-151.06(b)(14) & (15) - Grievance and Appeals Process:

DC Code §44-151.06(b)(14) requires provisions that the residents shall follow to file a grievance and the procedures the provider shall follow to resolve the grievant and that the resident shall not be subject to retaliatory action for filing a grievance, and the right of residents to bring a civil action to recover for injury resulting from violations of this chapter and its regulation.

During the examination period, contract to D.C. Code §44-151.06(b)(14), the Facility was not able to furnish such policy documents or records to examiners, nor mechanism for tracking complaints or grievances and their resolutions.

Subsequent to the examination period in 2023, the Facility submitted its Grievance Policy and Procedures document. However, the document seems to be a draft and not dated or approved version.

Recommendation:

Within ninety (90) days of the date of this Report, the Facility shall develop formal written grievance policies and procedures that are compliant with the D.C. regulation and develop a system for tracking complaints and grievances received, including board/committee oversight and individuals responsible for monitoring and tracking complaints and grievances within the organization. Evidence of such a policy and procedures shall be submitted to the Department.

Conflict of Interest:

The Facility has established a formal conflict-of-interest policy. This policy requires the directors of the Facility and responsible employees to complete a conflict-of-interest questionnaire and statement annually. Furthermore, the Facility's Bylaws under Article V, Section 5.09 requires that any transaction or vote involving a potential conflict of interest shall be approved only when a majority of disinterested directors determine it is in the best interest of the corporation and the minutes of meetings record such disclosure, abstention, and rationale for approval.

Although the Facility had the required conflict-of-interest policy, our examination disclosed that conflict-of-interest questionnaires were missing for certain key employees and directors. Therefore, the examiners were not able to ascertain and/or verify whether or not the organization had any material conflict(s) during the exam period, as well as the nature and magnitude of such conflict(s). According to management, this was an oversight, and management acknowledged the importance of annually completing these questionnaires and indicated the intent to do so.

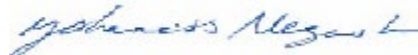
Recommendation:

It is recommended that the Facility institute proper policies and procedures to ensure that all directors, officers, and responsible employees timely complete and sign the statements annually to provide assurance that all potential conflicts are properly disclosed and subject to evaluation, as well as maintained and are readily available for convenient inspection by regulators and stakeholders. Within ninety (90) days of the date of this Report, the Facility shall submit to the department evidence of the establishment and implementation of such policies and procedures.

CONCLUSION AND SIGNATURES

The insurance examination practices and procedures promulgated by the Department have been followed in ascertaining the financial condition of the Facility, consistent with the insurance laws of the District of Columbia. Such procedures performed on this examination do not constitute an audit that follows generally accepted auditing standards, and no audit opinion is expressed on the financial statements in this Report. No material adjustments were identified during the examination.

Respectfully submitted,



Yohaness Negash, CFE, CIA, PIR, CFE (Fraud), CISA
Supervising Examiner
District of Columbia Department of Insurance,
Securities and Banking

Under the Supervision of,



N. Kevin Brown, CPA, CFE
Chief Examiner
District of Columbia Department of Insurance,
Securities and Banking