



Government of the District of Columbia
Vincent C. Gray, Mayor
Department of Insurance, Securities and Banking



William P. White
Commissioner

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

Re: Report on Examination – 1330 OpCo, LLC d/b/a The Residences at Thomas Circle as of
December 31, 2011

ORDER

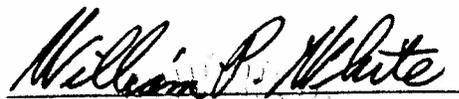
Pursuant to Examination Warrant 2012-2, an Examination of **The Residences at Thomas Circle** as of January 31, 2011 has been conducted by the District of Columbia Department of Insurance, Securities and Banking (“the Department”).

It is hereby ordered on this 30th day of April, 2013, 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 Association 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.



William P. White
Commissioner

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING



REPORT ON EXAMINATION

1330 OpCo, L.L.C.
DBA THE RESIDENCES AT THOMAS CIRCLE

AS OF

DECEMBER 31, 2011

1330 OpCo, L.L.C.
DBA Residences at Thomas Circle
Report on Examination
December 31, 2011

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Washington, D.C.

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December 31, 2012

Honorable William White
Commissioner
Department of Insurance, Securities and Banking
Government of the District of Columbia
810 First Street, NE, Suite 701
Washington, D.C. 20002

Dear Commissioner:

In accordance with Section 44-151.13 of the District of Columbia Official Code, we have examined the financial condition and activities of

1330 OpCo, L.L.C.
D/B/A The Residences at Thomas Circle

(Hereinafter called the "Facility") at its home office located at 1330 Massachusetts Avenue, Washington, DC 20005-1543, and the following Report on Examination is submitted.

SCOPE OF EXAMINATION

This examination, covering the period from April 5, 2005 (the effective date of the adoption of the Continuing Care Retirement Communities Act) to December 31, 2011, including any material transactions and/or events noted occurring subsequent to December 31, 2011, was conducted by examiners of the District of Columbia Department of Insurance, Securities and Banking (the Department).

There were no prior examinations of the Facility.

Our examination was conducted in accordance with examination policies and standards established by the District of Columbia Department of Insurance, Securities and Banking and accordingly included such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

Our examination included a review of the business policies and practices, management and corporate matters, a verification and evaluation of assets and a determination of the existence of liabilities of the Facility. In addition, our examination included tests to provide reasonable assurance that the Facility was in compliance with applicable laws, rules and regulations. In planning and conducting our examination, we gave consideration to the concepts of materiality and risk, and our examination efforts were directed accordingly.

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The Facility is audited annually by an independent public accounting firm. The firm expressed unqualified opinions on the financial statements of the Facility for calendar years 2005 through 2011. We placed substantial reliance on the audited financial statements for calendar years 2005 through 2010, and consequently performed only minimal testing for that period. We concentrated our examination efforts on the year ended December 31, 2011. We reviewed the working papers prepared by the independent public accounting firm related to the audit for the year ended December 31, 2011, and directed our efforts to the extent practical to those areas not covered by the firm's audit.

HISTORY

General:

The Facility was formerly known as American Baptist Homes of the West (ABHW) Chartered by members of the Baptist Church. On December 6, 2004 a limited liability corporation was formed, 1330 OPCO L.L.C. for the acquisition of the Facility. The transfer of the Facility from a non-profit to a for-profit entity was approved by the DC Attorney on March 18, 2005. As part of this transfer, the ABHW established The Thomas House Benevolence Fund (Fund) to provide financial assistance to needy individuals who were residents at the time of the transfer of ownership from ABHW to the Facility. The Fund is administered by the American Baptist Homes Foundation of the West, Independently of 1330 OPCO, LLC and its affiliates. As of January 1, 2009 the Facility was owned by CRP Thomas House L.L.C. (RECO) (98%), TH1330 L.L.C. (1%) and Pantheon Moon, L.L.C. (1%). In January 2010 RECO acquired TH1330 (1%) in equity of the Facility.

The Facility ceased marketing continuing care services in 2005 due to market conditions. During subsequent years, the income for the Facility was from its independent living residences. The income was exclusively from rental or previously sold condominium residences. In 2011, the Facility considered a return to offering a Continuing Care Residency Agreement to new residents, and submitted the proposed contract to DISB for review. However, in 2012, the Facility elected not to pursue a business model that included offering continuing care to new residents. Accordingly, no Continuing Care Residency Agreements were ever executed by any new resident, and no new Continuing Care Residency Agreements have been entered into by the Facility

Description of Facility and Services:

The Facility provides services for independent, assisted living, and skilled nursing care. Independent living residents are provided with the use of their living accommodations, all common facilities on campus, light housekeeping on a weekly basis, heavier housecleaning on an annual basis, emergency call service, scheduled transportation to social activities and shopping, water, sewer, trash, recycling, electricity, heating and air-conditioning, washer and dryer, basic cable TV, complete maintenance of all common areas.

As of December 31, 2011 and 2010, a total of 131 units are available for occupancy on the independent living floors and a total of 80 beds are available for occupancy in the assisted,

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Alzheimer, and skilled nursing units. As of December 31, 2011, the Facility had occupancy rates of 89, 90, 75 and 56 percent in the independent, assisted, Alzheimer, and skilled nursing units, respectively.

Affiliations:

The Facility is affiliated through common ownership with Capitol Seniors Housing, formerly Carlyle Seniors Housing. The Facility is owned by a Limited Liability Corporation (LLC) and as such there are no directors or stockholders. There are however, Members that own the LLC. Originally there were three LLC owners of the facility. One LLC, the contract managing organization, was bought out when the managing contract was changed.

Management:

On July 1, 2010, the owners of the Facility entered into a management agreement with Life Care Services, LLC ("LCS"), pursuant to which LCS was engaged as an agent of the Facility's owner to manage, operate and maintain the Facility subject to the direction and approval of the Owner. The Facility has agreed to pay LCS a management fee in an amount equal to 3.5 percent of the gross revenues of the Facility per year. For the year ended December 31, 2011 and 2010, LCS earned management fees of approximately \$366,000 and \$178,000, respectively, under this agreement. Additionally, for the year ended December 31, 2011 and 2010, LCS earned incentive fees of approximately \$31,000 and \$0, respectively, under this agreement.

The initial term of the management agreement expires on June 30, 2013. The Facility can terminate this agreement without cause and for any reason, upon at least 60-days written notice to LCS. The Facility may be required to pay a termination fee to LCS, if certain conditions under the agreement have been met at the time of termination.

The Facility had previously entered into a management agreement with DC Senior Cares, LLC ("DC Senior"), in which DC Senior had full authority to operate and manage the Facility. The Facility agreed to pay DC Senior a management fee in an amount equal to 5 percent of the gross revenues of the Facility per year. For the year ended December 31, 2010, DC Senior earned management fees of approximately \$241,000 under this agreement, respectively. On May 10, 2010, the Facility terminated its agreement with DC Senior effective June 30, 2010.

Board of Directors/ Committees:

There are no directors or committees of the board for the Facility due to type of organization, a LLC. There is a managing member that controls 99% of the LLC. In addition, there are no By-Laws.

Officers:

The following were Officers of CRP Thomas House LLC serving at December 31, 2011:

Robert G. Stuckey	President
Thaddeus A. Paul	Vice President

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Robert C. Konigsberg
Stacy M. Rosenthal

Treasurer
Assistant Secretary

The following LCS employees were assigned to the Facility as of December 31, 2011:

Angie Layfield
Brent Stidley

Executive Director
Accounting Director

Corporate Records:

There are no corporate minutes for the LLC. In addition, some records are stored offsite in a computer system of the contractual managers of the Facility. See the “Comments and Recommendations” section of this report under the caption “Corporate Records”.

ANNUAL DISCLOSURE STATEMENT

District of Columbia Code §44-151.05 requires “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.” A review of the 2010 Disclosure Statement found that the Facility was not in Compliance with the Code. In addition, the 2011 Disclosure Statement has not been submitted. For further discussion, see the “Comments and Recommendations” section of this Report under the caption “Disclosure Statement.”

CONTRACT FOR CONTINUING CARE; SPECIFICS (RESIDENCY AGREEMENT)

The residency agreement was reviewed for compliance with District of Columbia Code §44-151.06 which requires the resident’s agreement contain certain information and requires the distribution of a copy to the resident. The agreement was found to be in compliance with the Code. No recommendations are made.

OPERATING RESERVES

District of Columbia Code §44-151.08 requires that “All continuing care facilities shall maintain, after opening, operating reserves equal to 20% of the total operating costs projected for the 12-month period following the period covered by the most recent annual disclosure statement filed.” The Code further stipulates that “The notes to the provider's annual audited financial statements shall state whether or not the reserve requirements have been met.” The Facility was not in compliance with the Code as of December 31, 2011. For further discussion see the “Comments and Recommendations” section of this Report under the caption “Annual Operating Reserves.”

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ESCROW; COLLECTION OF DEPOSITS

District of Columbia Code §44-151.09 requires that “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, in the following instances:

- (1) The amounts received if an applicant for residence in a continuing care facility or their guardian provide a deposit with their application prior to the applicant taking up residence in the continuing care facility;
- (2) If an applicant for residence in a continuing care facility or their guardian provide a deposit with their application prior to the construction or occupancy of the facility; and
- (3) If a revocation order for the provider's license as a continuing care facility is under appeal.”

A review was performed of the Facility’s escrow and collection of deposit practices. No material exceptions were found and no recommendations have been added to this examination Report.

FIDELITY BOND AND OTHER INSURANCE

The Facility had fidelity bond coverage of \$7,000 with a deductible of \$1,000.

The Facility appears to have adequate insurance coverage for property, building and contents and liability with coverage as required by District of Columbia Official Code §44-111.01.

PENSION AND STOCK OWNERSHIP

The Facility does not offer pension or stock ownership plans.

ACCOUNTS AND RECORDS

Life Care Services, LLC (LCS), through its management agreement with the Facility, offers a variety of services to the Facility related to accounts and records including those for payroll, general ledger and financial statements, accounts payable, resident billing, health center billing and assisted living billing. The major information systems processing environment applications employed by LCS include HealthMEDX Vision, Workforce Central, Oracle E-Business Suite and C3 LinC. The Examination noted certain instances where the financials of the Facility did not meet the AICPA recommendations for a Continuing Care Facility. The attached financials are restated to conform with the AICPA Audit and Accounting Guide for Health Care Facilities.

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FINANCIAL STATEMENTS

The following financial statements reflect the financial condition of the Facility as of December 31, 2011, as determined by this examination:

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

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BALANCE SHEET
December 31, 2011
ASSETS

	Amounts per Annual Statement	Examination Adjustments	Amounts per Examination
Cash and cash Equivalents (Note 3)	\$ 838,577	\$ 0	\$ 838,577
Accounts Receivable (Net of Allowance for Uncollectible Accounts)	796,181		796,181
Prepaid Expense and other	106,643		106,643
	<hr/>		<hr/>
Total Current Assets	1,741,401	0	1,741,401
Assets Limited as to use (Note 2&3)	190,361		190,361
Property and Equipment-Net	29,218,030		29,218,030
Other Assets			
Deferred Financing Costs (Net of Amortization)	<u>10,000</u>	0	<u>10,000</u>
Total Assets	<u>\$ 31,159,792</u>	<u>\$ 0</u>	<u>\$ 31,159,792</u>

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Balance Sheet
Liabilities and Equity
December 31, 2011

<u>Current Liabilities</u>	Amounts per Annual Statement	Examination Adjustments	Amounts per Examination
Current Maturities of Long Term Debt (Note 2)	\$ 400,000	\$ 0	\$ 400,000
Accounts Payable	1,792,094		1,792,094
	<hr/>		<hr/>
Total Current Liabilities	2,192,094	0	2,192,094
Obligation to Provide Future Services (Note 1)	0		0
Long Term Debt			
Mortgage Loan	13,693,410		13,693,410
Refundable Entrance Fees	652,945		652,945
Due to Related Parties	724,760		724,760
Deferred Revenue	128,700		128,700
	<hr/>		<hr/>
Total Liabilities	17,391,909	0	17,391,909
<u>Members' Equity</u>			
Members' Equity	13,767,883	0	13,767,883
Obligation to Provide Future Services (Note 1)	0		0
Total Liabilities and Members' Equity	<u>\$ 31,159,792</u>	0	<u>\$31,159,792</u>

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STATEMENT OF INCOME
For Year ended December 31, 2011

	Annual Statement	Examination Adjustments	Amounts per Examination
<u>Revenues and Gains</u>			
Residential and Health Care Services	\$10,462,586	\$ 0	\$10,462,586
Change in obligation to provide future services (Note 1)	0		0
	10,462,586	0	10,462,586
<u>Expenses</u>			
Facility Operating	2,674,891		2,674,891
Salaries and wages	4,949,501		4,949,501
General and administrative	1,306,286		1,306,286
Management Fee	397,326		397,326
Real Estate tax	271,069		271,069
Advertising	280,212		280,212
Depreciation	704,693		704,693
Interest expense	393,965		393,965
	10,979,943	0	10,979,973
Loss from Operations	\$ (515,357)	0	\$ (515,357)
Provision for Franchise Taxes	0		0
Net Loss	\$ (515,357)	0	\$ (515,357)

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MEMBERS EQUITY

Members Equity contribution as of March 28,2005	\$ 10,850,000
Net Income (Loss) 2005	(865,502)
Member Equity as of December 31, 2005	<u>9,984,498</u>
Member Contributions	1,173,718
Net Income (Loss) 2006	(123,667)
Member Equity as of December 31, 2006	<u>11,034,549</u>
Net income (Loss) 2007	(667,143)
Member Contributions	502,025
Member Equity as of December 31, 2007	<u>10,869,431</u>
Net income (Loss) 2008	(3,245,733)
Change in Accounting Principle (Deposit Method)	566,185
Member Contributions	3,959,635
Member Equity as of December 31, 2008	<u>12,149,518</u>
Prior period adjustment (as relates to 2008)	280,478
Member Contributions	2,617,488
Distributions to Members	(242,208)
Net Income 2009	38,694
Change in Members Capital 2009	<u>2,694,452</u>
Member Equity as of December 31, 2009	<u>14,843,970</u>
Net income (Loss) 2010	\$ (1,966,577)
Member Contributions	1,115,803
Distributions to Members	(185,799)

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Change in Members Capital 2010	<u>(1,036,573)</u>
Member Equity as of December 31, 2010	13,807,397
Net income (Loss) 2011	(515,357)
Member Contributions	<u>475,843</u>
Net change in surplus as regards policyholders 2011	<u>(39,514)</u>
Member Equity as of December 31, 2011	<u>\$ 13,767,883</u>

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ANALYSIS OF EXAMINATION CHANGES TO SURPLUS

Member Equity as of December 31, 2011 as relates to the annual Statement of the Facility at December 31, 2011	\$ 13,767,883
<u>Examination Adjustments</u>	
Obligation to provide future services	0
Member Equity as of December 31, 2011	<u>\$ 13,767,883</u>

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COMPARATIVE FINANCIAL POSITION OF THE FACILITY

The comparative financial position of the Facility for the five-year period ended December 31, 2011, is as follows:

	<u>2011</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>
Assets	\$31,159,792	\$31,069,605	\$32,141,514	\$31,616,787	\$31,600,932
Liabilities	17,391,909	17,262,208	17,297,544	19,467,269	20,731,501
Member Contributions	475,843	1,115,803	2,617,488	3,959,635	502,025
Members Equity	13,767,792	13,807,397	14,843,970	12,429,996	10,869,431
Change in Accounting				806,463	
Change in Obligation to Provide future service	0	0	0	0	0
Member Distribution	0	(185,799)	(242,208)	0	0
Net income (loss)	(515,357)	(1,966,577)	38,694	(2,929,255)	(667,143)

Note: Amounts for the years ended December 31, 2007 through 2010 were taken from the Annual Statements of the Facility as filed with the Department. Amounts for the year ended December 31, 2011 are amounts per examination.

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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 at December 31, 2011 of the Facility's obligation to provide future services to current residents. Due to the limited number of residents to whom this would apply, the liability was considered to be immaterial.

Note 2. Mortgage Debt

On March 28, 2005, the Facility entered into a \$20,000,000 mortgage loan with a financial institution for the purpose of acquisition and conversion of the independent living units into for-sale residential senior condominiums, as well as to renovate the skilled nursing, Alzheimer, and assisted living units. The Facility used approximately \$10,400,000 to purchase the Building, and the remaining \$9,600,000 was held for future improvements to the Building.

On November 2, 2009, the Facility entered into a loan modification agreement, under which the maximum borrowing amount under the loan agreement was reduced from \$20,000,000 to \$14,393,410, with a maturity date of November 1, 2012. The loan was interest only until May 1, 2011, at which time the Facility was required to begin making quarterly principal amortization payments of \$100,000 until the maturity of the loan. Upon maturity all unpaid principal and interest payments on the loan were due in full.

The loan accrued interest at a rate of 30-day LIBOR plus 2.0 percent. The interest rate at December 31, 2011 and 2010 was 2.27 percent and 2.24 percent, respectively. For the years ended December 31, 2011 and 2010, interest expense totaled approximately \$394,000 and \$390,000, respectively, including amortization of deferred financing costs of approximately \$20,000 and \$22,000, respectively. The loan is collateralized by the assets of the Facility.

On July 30, 2012, the Facility refinanced the remaining mortgage loan up to a total amount of \$21,810,000. The initial funding amount of the loan was \$14,410,000 and the remaining proceeds may be distributed in accordance with the loan agreement. The loan has a maturity

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date of July 30, 2015, subject to two one year extensions. The loan may also be prepaid in accordance with the loan agreement. The outstanding principal balance of the loan accrues interest at a floating rate equal to 4.25 percent per annum in excess of the greater of the 3-month LIBOR rate or 0.50 percent. Commencing on September 1, 2012, and continuing the first day of each calendar month through February 1, 2014, the Facility is required to make interest only payments in arrears. Thereafter, commencing on March 1, 2014, and continuing the first day of each calendar month, the Facility will be required to make monthly principal and interest payments of \$75,169.

Note 3 Construction Escrow

The revenue bond referenced in Note 2 of this Examination Report stipulates the Facility was required to establish and maintain an interest reserve with a minimum balance of \$499,942. During 2009, the Facility met certain conditions under the loan agreement which allowed for the interest reserve to be converted to a capital improvements reserve to fund future construction expenses of the Facility. As of December 31, 2011 and 2010, the Facility has funded approximately \$47,400 and \$284,700 of construction expenses from its capital improvements reserve, respectively.

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COMMENTS AND RECOMMENDATIONS

Annual Operating Reserve:

Pursuant to District of Columbia Code Section §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 by investment grade securities.

Additionally, District of Columbia Code Section 44-141.08(d) requires that the facility's audited financial statements shall state whether or not the reserve requirement has been met. The Facility's audited financial statements do not contain the required Operating Reserve disclosure for audit years prior to 2011. Also, the Operating Reserve as disclosed in the 2011 audited financial statement was erroneously reported as not applicable to the Facility.

Going forward, the Facility must maintain an operating reserve for continuing care residents and must ensure that the appropriate audited financial statements disclosures have been met.

Corporate Records: Records are maintained off premises in violation of District of Columbia Official Code 44-151.13(a) which states each provider shall keep and make available to the Commissioner at the provider's place of business any books and records that the Commissioner requires to enable the Commissioner to enforce any rule and regulation of the CCRC statutes.

It is recommended that the Facility comply with District of Columbia Official Code 44-151.13(a) or obtain approval from the Department to maintain its books and records in an alternative manner as provided by District of Columbia Official Code 44-141-13(c).

Disclosure Statements:

The Facility is not in compliance with District of Columbia Official Code §44-151.07(a). The Facility has not submitted a disclosure statement to the Department of Insurance, Securities and Banking for 2011. It was noted that none of the previous disclosure statements were complete. Each was missing the required comparison to actual results as required by Regulations in District of Columbia Official Code §44-151.07(a)(2).

It is recommended that the Facility comply with District of Columbia Official Code and complete the Disclosure Statement with required attachments in a timely and accurate manner.

Non-refundable Fees:

The Facility records deferred revenue on non-refundable fees by amortizing the non-refundable fees on a straight line basis over 67 months, as stipulated in the residents' contract. However the correct method for determining deferred revenue on non-refundable fees is discussed in FASB

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ASC 954-430-25-1. Accordingly, a CCRC with sufficient historical experience and relevant data about life expectancies should amortize the non-refundable fees based on life expectancies of the residents in determining deferred revenue.

It is recommended that the Facility comply with the AICPA accounting standard with regard to its calculation of non-refundable fees deferred revenue.

Additional Comments and Recommendations

During our examination, in addition to the above Comments and Recommendations, we made other suggestions and recommendations to the Facility with regard to record keeping and other procedures relating to its operations. These additional suggestions and recommendations were not deemed significant for purposes of our Report on Examination, and are not included in our Report on Examination.

SUBSEQUENT EVENTS

The Facility refinanced the mortgage loan in 2012 as stated in note 2 of the financials.

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CONCLUSION

Our examination disclosed that as of December 31, 2011, the Facility had:

Total assets	<u>\$ 31,159,792</u>
Liabilities	\$ 17,391,909
Members Equity	<u>13,767,883</u>
Total liabilities and equity	<u>\$ 31,159,792</u>

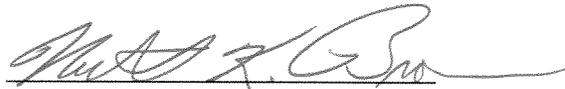
Based on our examination, the accompanying balance sheet properly presents the statutory financial position of the Facility as of December 31, 2011, and the accompanying statement of income properly presents, in material aspects, the statutory results of operations for the period then ended.

SIGNATURES

Respectfully submitted,



Frank J Ryan JR. CPA, CFE
Examiner-In-Charge



Nathaniel Kevin Brown. CPA, CFE
Chief Examiner

District of Columbia Department of
Insurance, Securities and Banking