

REPORT ON EXAMINATION

OF

ACTIVE RETIREMENT COMMUNITY, INC.

D/B/A

JEFFERSON'S FERRY

AS OF

DECEMBER 31, 2011

DATE OF REPORT

MARCH 16, 2015

EXAMINER

EDOUARD MEDINA

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

March 16, 2015

Honorable Benjamin M. Lawsky
Superintendent of Financial Services
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law and the New York Public Health Law and acting in accordance with the instructions contained in Appointment Number 30897, dated January 11, 2013, annexed hereto, I have made an examination as of December 31, 2011, into the condition and affairs of Active Retirement Community, Inc. d/b/a Jefferson's Ferry, a not-for-profit continuing care retirement community ("CCRC") licensed pursuant to the provisions of Article 46 of the New York Public Health Law, and submit the following report thereon.

The examination was conducted at the home office of Active Retirement Community, Inc. d/b/a Jefferson's Ferry located at One Jefferson Ferry Drive, South Setauket, NY.

Wherever the designations the "Community" or "Jefferson's Ferry" appear herein, without qualification, they should be understood to indicate Active Retirement Community, Inc.

Wherever the designation the "Department" appears herein, without qualification, it should be understood to indicate the New York State Department of Financial Services.

1. SCOPE OF THE EXAMINATION

The previous examination was conducted as of December 31, 2007. This examination covers the four year period from January 1, 2008 through December 31, 2011. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

Representatives of the New York State Department of Financial Services and the New York State Department of Health conducted a site survey of the Community's facility on November 9, 2012, pursuant to the requirements of Section 4614(1) of the New York Public Health Law.

The examination comprised a verification of assets and liabilities as of December 31, 2011, in accordance with generally accepted accounting principles (GAAP), as modified by the Department pursuant to Insurance Regulation No. 140 (11 NYCRR 350). A review of income and disbursements deemed necessary to accomplish such verification, and utilized, to the extent considered appropriate, work performed by the Community's independent certified public accountant and independent actuary.

A review was also made of the following items:

- Community documents
- Growth of the Community
- Financial documents
- Board of directors' meeting minutes
- Occupancy levels
- Plan to restore surplus

This report on examination is confined to financial statements and comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

The Community was audited annually for the years 2008 and 2009 by the accounting firm Ernst & Young LLP. In 2010, the Community retained ParenteBeard LLC. as its new accounting firm. ParenteBeard LLC. remained the Community's accounting firm as of the examination date. Certain audit workpapers of ParenteBeard LLC were reviewed and relied upon in conjunction with this examination.

The examiner reviewed the corrective actions taken by the Community with respect to the recommendations contained in the prior report on examination. The results of the review are contained in Item 4 of this report.

2. DESCRIPTION OF THE COMMUNITY

Jefferson's Ferry is a continuing care retirement community, as defined in Article 46(2-b) of the New York State Public Health Law, and has received a Certificate of Authority from the New York State Continuing Care Retirement Community Council. The Community commenced operations in May 2001.

The Community's independent living section consists of 220 apartments and 28 cottages. Its health center has 60 private studio and one-bedroom apartments. There is also a skilled nursing facility with 40 private rooms, and 20 private skilled nursing rooms in a secured dementia area.

The Community operates as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. In exchange for an entrance fee and monthly maintenance charges, the Community provides lifetime residence and varying benefits for nursing care. The amount of the

entrance fee and monthly maintenance charges are dependent upon the contract selected and the size of the residence being occupied.

The following is a description of the two contract options available to the Community's residents:

i. Traditional Continuing Care Residency Agreement

This contract provides for a refund of the first person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month that the resident occupied the living accommodation or a bed in the enriched housing or nursing care portion of the health center, less (i) any costs incurred by the Community at the specific request of the resident as set forth in an addendum to the agreement to the extent that those costs were not paid by the resident and (ii) any unpaid monthly service fees, and other charges as set forth on the monthly service fee statement and damage to the living accommodation. The Community will pay a refund of the second person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month that the resident occupied the living accommodation or a bed in the enriched housing or nursing care portion of the health center. Payment of a refund is made within thirty (30) days after a new resident pays the applicable entrance fee for the living unit, but in no event more than one year after the previous resident terminates occupancy. When two residents contractually share a living accommodation, any refund of the entrance fee will only be paid at termination of the contract.

ii. 90% Refundable Option First Person Entry Fee; Non Refundable Second Person Entry Fee

This contract provides for a refund of the first person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month that the resident occupies the living accommodation or a bed in the enriched housing or nursing care portion of the health center, with the added provision that the refund shall not be less than 90% of the first person entrance fee; except if (i) any costs incurred by the Community at the specific request of the resident as set forth in an addendum to their agreement to the extent that those costs were not paid by the resident and (ii) any unpaid monthly service fees, and other charges as set forth on the monthly service fee statement, and damage to the living accommodation. The Community will pay a refund of the second person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month the resident occupied the living accommodation or a bed in the enriched housing or nursing care portion of the health center. Payment of a refund is made within thirty (30) days after a new resident pays the applicable entrance fee for the living unit, but in no event more than one year after the previous resident terminates residency. When two residents contractually share a living accommodation, any refund of the entrance fee will only be paid at termination of the contract.

A. Management and Controls

The Community amended and restated its by-laws effective August 22, 2011. Pursuant to the Community's charter and by-laws, management of the Community is to be vested in a board of directors consisting of not less than three, or more than twelve directors. As of the

examination date, the board of directors was comprised of six members. The Community's board met at least once each quarter during the examination period.

Section 4607 of the New York Public Health Law states in part:

“(1)... Within four months of close of the operator’s fiscal year... the operator shall file an annual statement with the commissioner and superintendent showing the condition as of the last day of the preceding calendar or fiscal year...

(2) The annual statement shall be in such form as the council prescribes and shall contain at least the following:

(a) Any change in status with respect to the information required to be submitted pursuant to section forty-six hundred four...”

Section 4604(2)(g) of the New York Public Health Law states in part:

“(2) In order to receive a certificate of authority to enter into contracts with respect to a particular community... the applicant, shall apply for a certificate of authority... and, in addition, shall submit the following...

(g) a copy of the bylaws, rules and regulations and internal governing documents of the applicant...”

Pursuant to the aforementioned Sections of the New York Public Health Law, information regarding changes in the by-laws must accompany the annual statement reported as of the last day of the fiscal year during which the change occurred. It should be noted that Jefferson Ferry’s Management did not provide the Department with information regarding the changes it made to its by-laws during the examination period.

It is recommended that the Community comply with the requirements of Sections 4607 and 4604 of the New York Public Health Law by providing the Department with information regarding any changes made to its by-laws.

The Community’s board of directors as of December 31, 2011 was as follows:

Name and Residence**Principal Business Affiliation**

Vincent Basilice
St. James, NY

Member,
Ophthalmic Center

Betsy Britton
Setauket, NY

Member,
John T. Mather Hospital

James Danowski
Wading River, NY

Member,
Cullen & Danowski, LLP

George F. Rice, Esq.
Garden City, NY

Chairman,
Spellman, Rice, Schure, Gibbons,
McDonough, & Polizzi, LLP

Wayne Shattes
Port Jefferson, NY

Vice President,
John T. Mather Hospital

John Sini
Setauket, NY

Treasurer,
Sini & Reeves, LLP

A review of the minutes of directors' meetings held during the period under examination revealed that meetings were generally well attended with all board members attending at least one-half of the meetings that they were eligible to attend.

The principal officers of the Community as of December 31, 2011 were as follows:

Officers**Title**

Karen Brannen

Chief Executive Officer

Robert Caulfield

Chief Financial Officer

Wayne Shattes

Secretary

B. Holding Company System

As of December 31, 2007, the by-laws of the Community provides that one-half of the board of directors is to be selected by the members of John T. Mather Memorial Hospital, located in Port Jefferson, New York, Inc. (Mather) and the other half is to be selected by the

members of St. Charles Hospital and Rehabilitation Center (St. Charles) and, together with Mather, “the Hospitals”.

Effective January 1, 2010, Mather Health System, Inc., New York became the sole parent of Jefferson’s Ferry. Prior to January 1, 2010, the ultimate parents of the Community were St. Charles and Mather.

The Jefferson’s Ferry Foundation (“the Foundation”) is a wholly-owned subsidiary of Jefferson’s Ferry. The Foundation was incorporated on June 8, 2006, and is a tax exempt organization. The purpose of the Foundation is to enhance services for residents and staff of the Community and to respond to the needs of the resident community through solicitation of donations and contributions that will support the capital needs and comprehensive services and programs of the Community. The Foundation is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code and is also exempt from state income taxes.

Section 901.10(d) of the Administrative Rules and Regulations of the New York Department of Health (10 NYCRR 901.10) states in part:

“...(d) A governing body wishing to enter into a management contract shall submit a proposed written contract to the department upon submission of a Certificate of Authority application in accordance with section 900.3(c)(13) or a governing body entering a new management contract or revising a management contract subsequent to the issuance of a certificate of authority shall submit a copy of the contract with the submission of the disclosure statement in accordance with section 901.9(a)(2)...”

Pursuant to an administrative services agreement, effective July 12, 2012, between the Community and the Foundation, the Community is to provide all administrative services relating to the operations of the Foundation. It should be noted that the Community failed to submit this administrative services agreement to the New York Department of Health, therefore it failed to

act in compliance with Section 901.10(d) of the Administrative Rules and Regulations of the New York Department of Health (10 NYCRR 901.10(d)).

It is recommended that the Community comply with the provisions of Section 901.10(d) of the Administrative Rules and Regulations of the New York Department of Health by submitting all of its administrative services agreements to the New York Department of Health.

Section 4606(9) of the New York Public Health Law states in part:

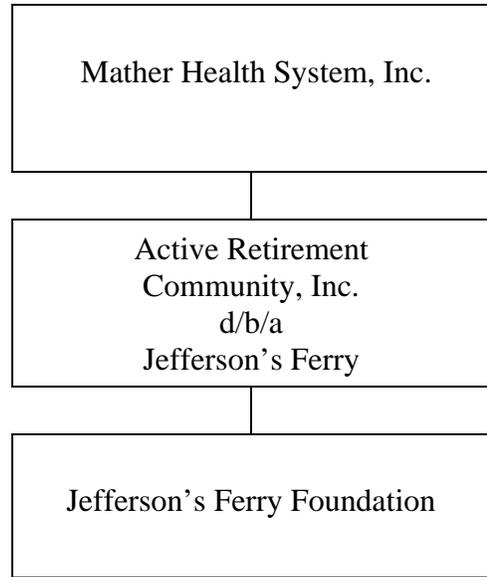
“Prior to the execution of a contract, or before the transfer of any money... the operator shall deliver to the person with whom the contract is to be entered into or the person’s legal representative the most recent annual statement...and an initial disclosure statement which contains the following:

9. If the applicant is the subsidiary corporation or the affiliate of another corporation, a statement identifying the parent corporation or the other affiliate corporation, the primary activities of such parent, or other affiliate corporation, the interest in the applicant held by such parent or other affiliate corporation, and the extent to which the parent corporation will be responsible for the financial and contractual obligations of the subsidiary...”

It was noted that the administrative services agreement with the Foundation was not made part of the Community’s disclosure statement. Therefore, the Community was not in compliance with Section 4606(9) of the New York Public Health Law.

It is recommended that the Community comply with the requirements of Section 4606(9) of the New York Public Health Law by including the requisite mention of its administrative services agreements within its disclosure statement.

The Community’s holding company system as of December 31, 2011 was as follows:



On November 15, 2004, the Community entered into a management agreement with New Life Management, Inc. The agreement was for a period of five years (unless terminated earlier, in accordance with the contract provisions).

The management agreement provided that New Life Management, Inc. would administer and manage the day-to-day operations of the Community, including providing the necessary services to supervise the Community's employees.

The management agreement with New Life Management, Inc. was terminated, without cause on July 31, 2009, with the approval of the board of directors. The Community is currently operating without an external manager.

C. Global Computer Systems

Global Computer Systems (Global) provides services to the Community such as on-site troubleshooting of hardware and software problems, hardware maintenance, weekly monitoring

of tape backup system and monthly verification of the integrity of data stored on tapes. The Community does not have a formal agreement with Global. The Community has a letter from Global detailing what services are covered and what services are not covered. The letter is not signed, and it has not been updated since 2001.

It is recommended that the Community establish a formal computer service agreement with Global Computer Systems.

D. Occupancy Rates

The following chart reflects the occupancy rates during the examination period for the Community's *Independent Living Units*:

Year	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Occupancy	96%	96%	95%	92%

The following chart reflects the occupancy rates during the examination period for the Community's *Enriched Housing / Adult Care Units*:

Year	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Occupancy	98%	90%	93%	97%

The following chart reflects the occupancy rates during the examination period for the Community's *Skilled Nursing Facility*:

Year	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Occupancy	98%	98gh%	95%	93%

E. Residents' Health Coverage

As per the residents' contracts with the Community, certain insurances (Medicare Parts A, B and D; Medigap or supplemental health insurance; auto insurance; and property/liability), are to be maintained by the resident.

“The Community monitors the residents' insurance coverages on an annual basis. The Community, annually, sends letters out to the residents requesting that they provide evidence of effective coverages for their insurances (i.e., Medicare Parts A, B and D; Medigap or supplemental health insurance; auto insurance; and property/liability insurance). Because this monitoring of the residents' insurance coverages is done on an annual basis, it may not be indicative as to when the residents no longer maintain their required coverages. The Community's management stated that they are in the process of establishing a methodology for monitoring such coverages on a more frequent basis than annually.

It is recommended that the Community monitor the residents' required insurance coverages more frequently than annually to ensure that such coverages are in force at all times.

F. Accounts and Records

During the course of the examination, it was noted that the Community's treatment of certain items was not in accordance with generally accepted accounting principles as modified pursuant to Insurance Regulation No. 140 (11 NYCRR 350) or annual statement instructions. A description of such items is as follows:

1. Investments

The annual statement instructions define short-term investments as follows:

“Short-term investments are investments that at time of acquisition have one year or less remaining to maturity.”

The Community incorrectly reported investments with maturity dates greater than one year as short-term investments when they should have been reported as long-term investments. It should be noted that a similar comment appeared in the prior report on examination.

It is once again recommended that the Community comply with the annual statement instructions, by classifying securities with maturity dates greater than one year as long-term investments in its financial statements filed with the Department.

2. Accounts Receivable

Part 350.6(c)(7) of Insurance Regulation No. 140 (11 NYCRR 350) states in part:

“(c) After satisfying the requirements of subdivisions (a) and (b) of this section, assets supporting reserve liabilities may be invested in any of the following...

(7) accounts receivable subject to the restrictions that they are expected to be paid and not more than: (i) 90 days overdue when the payor is not a government agency; and (ii) 12 months overdue when the payor is a government agency...”

The Community reported in its actuarial balance sheet as admitted assets both accounts receivable applicable to Medicaid accounts, due more than 12 months and accounts receivable from various residents due more than 90 days.

It is recommended that the Community comply with the requirements of Part 350.6(c)(7) of Insurance Regulation No. 140 by not reporting in its actuarial balance sheet, as admitted assets,

government receivables that are overdue more than 12 months and non-government receivables that are overdue more than 90 days.

3. Prepaid Expenses

The Community's Management mistakenly overstated its 2011 prepaid expenses by \$129,005 and understated its accounts receivable by the same amount. The overstatement was due to the Community's Management incorrectly reporting its accounts receivables net of investment income due and accrued on its filed annual statement as of December 31, 2011. Although there was no valuation difference in the Community's totals assets the above line items were not reported accurately.

It is recommended that the Community exercise greater care when preparing its filed annual statement.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following statements show the assets, liabilities and net worth as of December 31, 2011, as contained in the Plan's 2011 filed annual statement, a condensed summary of operations and a reconciliation of the net worth account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Plan's financial condition as presented in its financial statements contained in the December 31, 2011 filed annual statement.

Independent Accountants

The firm of ParenteBeard LLC was retained by the Community to audit the Community's combined financial statements of financial position for calendar years 2011 and 2010, and the related consolidated statements of operations and cash flows for the years then ended.

ParenteBeard LLC concluded that the consolidated financial statements present fairly, in all material respects, the financial position of the Community at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

<u>Assets</u>	<u>Examination</u>	<u>Community</u>
Cash and investable assets	\$ 38,959,564	\$ 38,959,564
Building improvements	119,743,495	119,743,495
Deferred financing costs	1,418,074	1,418,074
Deferred marketing costs	<u>157,294</u>	<u>157,294</u>
Total assets	\$ <u>160,278,427</u>	\$ <u>160,278,427</u>
 <u>Liabilities</u>		
Loans payable	\$ 47,954,754	\$ 47,954,754
Actuarial reserve	<u>107,511,220</u>	<u>107,511,220</u>
Total liabilities	\$ <u>155,465,974</u>	\$ <u>155,465,974</u>
 <u>Net surplus</u>		
Net actuarial surplus	\$ <u>4,812,453</u>	\$ <u>4,812,453</u>
Total liabilities and net actuarial surplus	\$ <u>160,278,427</u>	\$ <u>160,278,427</u>

Note: It should be noted that the net asset values herein are reported on a statutory/ actuarial basis. As such, the values differ from the certified financial statements prepared by the Community's certified public accountants.

B. Statement of Revenue, Expenses and Actuarial Surplus

The statement of revenue and expenses is presented on a GAAP basis for the period January 1, 2006* through December 31, 2011:

Revenue

Monthly maintenance fees	\$ 70,773,176	
Other revenue from residents	30,499,189	
Earned entrance fees (net of refunds)	11,846,773	
Interest and dividend income	6,779,019	
Net realized capital losses	<u>(16,232)</u>	
Total revenue		\$ 119,881,925

Expenses

Interest expenses	\$ 16,039,701	
Facility and dining expenses	42,291,911	
Health expenses	30,541,103	
Administration expenses	15,945,305	
Depreciation and amortization	21,985,763	
Real estate taxes and pilot	<u>4,420,324</u>	
Total expenses		\$ <u>131,224,107</u>
Net loss		\$ <u>(11,342,182)</u>

*Although the examination period for this report was January 1, 2008 to December 31, 2011 the amounts for the Statement of Revenue, Expenses and Actuarial Surplus and the Changes in Actuarial Surplus encompass calendar years 2006 and 2007, which were not included in the last report on examination.

Changes in Actuarial Surplus

Actuarial surplus increased \$16,019,147 during the period January 1, 2006* through December 31, 2011, detailed as follows:

Actuarial surplus, as of December 31, 2005			\$ (11,206,694)
	<u>Gains in</u> <u>Surplus</u>	<u>Losses in</u> <u>Surplus</u>	
Net loss (GAAP)		\$ 11,342,182	
Statutory adjustment	\$ <u>27,361,329</u>	_____	
Net increase in surplus			<u>16,019,147</u>
Actuarial surplus, per report on examination, as of December 31, 2011			\$ <u>4,812,453</u>

*Although the examination period for this report was January 1, 2008 through December 31, 2011 the amounts for the Statement of Revenue, Expenses and Actuarial Surplus and the Changes in Actuarial Surplus encompass calendar years 2006 and 2007, which were not included in the last report on examination.

4. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained five comments and recommendations as follows (page numbers refer to the prior report):

ITEM NO.

PAGE NO.

Surplus

- | | | |
|----|---|--------------|
| 1. | As of December 31, 2005, the Community's required actuarial surplus, pursuant to Part 350.3 of New York Insurance Department Regulation 140 (11 NYCRR 350.3), as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$ (11, 206,694). | 2, 3, 12, 15 |
|----|---|--------------|

The Community is currently operating under a Plan of Restoration that was accepted by the New York Insurance Department on August 7, 2006.

The Community is no longer operating under a Plan of Restoration.

Description of Community

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|----|---|---|
| 2. | It is noted that a revised resident contract has been submitted to the Department of Health for approval. Such approval is pending the resolution of the propriety of aspects of the Community's underwriting procedures by the Department of Health. | 6 |
|----|---|---|

The Community has complied with this recommendation.

Accounts and Records

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|----|--|----|
| 3. | It is recommended that the Community comply with the annual statement instructions, and classify securities with maturity dates greater than one year as long-term investments in its filed financial statements to the Superintendent of Insurance. | 10 |
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The Community has not complied with this recommendation. A similar recommendation is contained in this report.

ITEM NO.**PAGE NO.**Accounts and Records (Cont.'d)

4. It is recommended that the Community comply with Section 5.10(a)(ii) of SCIDA's guidelines and maintain investments in its operating reserve fund which mature or are redeemable within the time frames indicated in such guidelines. 10

The Community has complied with this recommendation.

Escrow Agreement

5. It is recommended that the Community comply with Section 4622(3)(a) of the New York Public Health Law and maintain the appropriate escrow account relative to priority reservation deposits. 11

The Community has complied with this recommendation.

5. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. <u>Management and Controls</u></p> <p>It is recommended that the Community comply with the requirements of Sections 4607 and 4604 of the New York Public Health Law by providing the Department with information regarding any changes made to its by-laws.</p>	<p>6</p>
<p>B. <u>Holding Company System</u></p> <p>i. It is recommended that the Community comply with the provisions of Section 901.10(d) of the Administrative Rules and Regulations of the New York Department of Health by submitting all of its administrative services agreements to the New York Department of Health.</p> <p>ii. It is recommended that the Community comply with the requirements of Section 4606(9) of the New York Public Health Law by including the requisite mention of its administrative services agreements within its disclosure statement.</p>	<p>9</p> <p>9</p>
<p>C. <u>Global Computer System</u></p> <p>It is recommended that the Community establish a formal computer service agreement with Global Computer Systems.</p>	<p>11</p>
<p>D. <u>Residents' Health Coverage</u></p> <p>It is recommended that the Community monitor the residents' required insurance coverages more frequently than annually to ensure that such coverages are in force at all times.</p>	<p>12</p>
<p>E. <u>Investments</u></p> <p>It is once again recommended that the Community comply with the annual statement instructions, by classifying securities with maturity dates greater than one year as long-term investments in its financial statements filed with the Department.</p>	<p>13</p>

ITEM**PAGE NO.**F. Accounts and Records

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|--|----|
| i. It is recommended that the Community comply with the requirements of Part 350.6(c)(7) of Insurance Regulation No. 140 by not reporting in its actuarial balance sheet, as admitted assets, government receivables that are overdue more than 12 months and non-government receivables that are overdue more than 90 days. | 13 |
| ii. It is recommended that the Community exercise greater care when preparing its filed annual statement. | 14 |

APPOINTMENT NO. 30897

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, **BENJAMIN M. LAWSKY**, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

Edouard Medina

as a proper person to examine the affairs of the

Active Retirement Community, Inc. dba Jeffersons Ferry

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

CCRC

with such other information as he shall deem requisite.

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

this 11th day of January, 2013

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:



Stephen J. Wiest
Deputy Bureau Chief
Health Bureau

