

**REPORT ON EXAMINATION**

**OF**

**ORCHARD PARK CCRC, INC.**

**D/B/A**

**FOX RUN AT ORCHARD PARK**

**AS OF**

**DECEMBER 31, 2015**

**DATE OF REPORT**

**MARCH 5, 2018**

**EXAMINER**

**HUSSEIN AGOUDA, CFE**

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

March 5, 2018

Honorable Maria T. Vullo  
Superintendent of Financial Services  
Albany, New York 12257

Madam:

Pursuant to the requirements of the New York Insurance Law and New York Public Health Law, and acting in accordance with the instructions contained in Appointment Number 31553, dated December 13, 2016, attached hereto, I have made an examination of Orchard Park CCRC, Inc. d/b/a Fox Run at Orchard Park, a not-for-profit continuing care retirement community licensed pursuant to the provisions of Article 46 of the New York Public Health Law, as of December 31, 2015, and respectfully submit the following report thereon.

The examination was conducted at the administrative office of Orchard Park CCRC, Inc. d/b/a Fox Run at Orchard Park, at One Fox Run Lane, Orchard Park, New York.

Wherever the designations the “Community” or “Fox Run” appear herein, without qualification, they should be understood to indicate Orchard Park CCRC, Inc. d/b/a Fox Run at Orchard Park.

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, 2012. This examination covered the three-year period from January 1, 2013 through December 31, 2015. 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 inspection of the Community's facility on January 19, 2017, pursuant to Section 4614(1) of the New York Public Health Law.

The examination comprised a verification of the assets and liabilities of the Community as of December 31, 2015, 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. It should be noted that the balance sheet included herein was reported as of December 31, 2015, on a statutory actuarial basis pursuant to Insurance Regulation No. 140 (11 NYCRR 350).

A review was also made of the following items:

- Community documents
- Compliance with By-laws
- Board of Trustees' minutes of meetings
- Occupancy levels
- Financial documents

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.

A review was also made to ascertain what actions were taken by the Community with regard to comments and recommendations contained in the prior report on examination.

## **2. DESCRIPTION OF THE COMMUNITY**

The Community is a continuing care retirement community as defined in Section 4601 of the New York State Public Health Law. The Community received a Certificate of Authority issued by the New York State Department of Health and approved by the New York State Continuing Care Retirement Council on November 1, 2007. Fox Run began operations on November 1, 2007. The Community is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

The Community is a not-for-profit organization located on a 54 acre campus in Orchard Park, New York. The Community was formed to build, own and operate a continuing care retirement community, which, as of the examination date, consists of one hundred eighty (180) independent living units (150 apartments and 30 patio homes), fifty-two (52) enriched housing and memory care units, and fifty (50) skilled nursing beds.

The Community provides residents with a continuum of services, including independent living, assisted living, and skilled nursing care. These services are covered under a life care contract between the Community and each prospective resident, which sets forth the responsibilities of both parties. Each resident is required to pay an entrance fee for the right to occupy a unit, and to pay a monthly service fee for the right to use the living accommodations and utilize the services of the

Community. The entrance fee and monthly service fees are based on the size and type of living unit, and the number of residents that occupy each unit.

The entrance fee is a one-time payment based upon three factors: 1) the type of apartment or patio home selected, 2) the entrance fee plan chosen, and 3) the number of occupants. The prospective resident pays an initial deposit of ten percent (10%) of the total entrance fee upon execution of the life care agreement. Entrance fee deposits are placed in an interest-bearing escrow account. The resident pays the balance of the total entrance fee on or prior to the residency date.

The Community offers three types of continuing care contracts. The following is a description of the three types of contracts offered to prospective residents by the Community:

- 90% Refundable Lifecare Plan

The 90% Refundable Plan offers medically necessary assisted living including memory care and skilled nursing care with no increase in the monthly service fee (except for the annual cost of living adjustment) and requires a higher entrance fee. The entrance fee refund provision of this plan allows for 90% of the entrance fee paid to be refunded to the resident's(s') estate.

The Community will provide a refund to a resident within thirty (30) days following the residency date of a new resident occupying the vacated unit, but not more than one (1) year after being vacated. Such refund shall be the greater of: a) the entrance fee paid less a four percent (4%) administrative fee and a two percent (2%) fee for each month or fraction thereof since the resident's residency date; and b) ninety percent (90%) of the full entrance fee paid.

The (greater) amount determined shall be further reduced by any costs incurred by the Community, at the request of the resident, that were set forth in writing in an addendum to the

signed agreement, reduced by any costs incurred to repair the living accommodation for damage caused by the resident; and any unpaid monthly service fees and other unpaid charges set forth on the monthly statement.

- Traditional Lifecare Plan

The Traditional Plan offers medically necessary assisted living including memory care and skilled nursing care with no increase in the monthly service fee (except for the annual cost of living adjustment). This option offers a lower entrance fee that declines at the rate of 4% upon completion of the first 90 (ninety) days of residency plus 2% per month for each month or fraction thereof after the residency date until the refund amount reaches zero.

If this agreement terminates within the ninety (90) days immediately following the residency date for any reason other than rescission, the Community shall issue a refund to the resident within thirty (30) days following the residency date of a new resident occupying the vacated unit, but shall not let more than one (1) year expire to refund the previous resident, after the unit was vacated. Such refund shall consist of the entrance fee paid to the Community by or on behalf of the resident without interest, less: (a) any costs incurred by the Community at the request of the resident that were set forth in writing in an addendum to the signed agreement; (b) any costs incurred to refurbish the unit for resale; and (c) any unpaid monthly service fees and other charges set forth on the monthly statement of charges.

For agreements terminating more than ninety (90) days following the residency date for any reason other than rescission, the refund shall be determined by first comparing: (a) the entrance fee paid less a four percent (4%) administrative fee and a two percent (2%) fee for each month or fraction thereof since the resident's residency date; and (b) ninety percent (90%) of the full entrance

fee paid. The greater of the amounts determined in (a) and (b) shall then be reduced by the following to arrive at the refund due the Resident: (c) any costs incurred by the Community at the request of the resident, that were set forth in writing in an addendum to the signed agreement; (d) any costs incurred to refurbish the unit for resale; and (e) any unpaid monthly service fees and other charges set forth on the monthly statement of charges.

- Choice Care Plan

The Choice Care plan offers thirty (30) lifetime days of medically necessary assisted living care including memory care and sixty (60) lifetime days of medically necessary skilled nursing care without an increase in the monthly service fee. The number of days of skilled nursing care is received and paid for by Medicare and does not count against the sixty (60) medically necessary lifetime days of skilled nursing care provided under this option. After receiving sixty (60) medically necessary lifetime days of skilled nursing care, the resident will pay the then current published daily rate, and any other rates for services received in the skilled nursing facility.

After receiving the thirty (30) lifetime days of medically necessary assisted living care, including memory care, the resident receiving the care will pay the then current published daily rate and any other rates for services received in assisted living, including memory care. The Choice Care plan entrance fee refund provisions allows for 90% of the entrance fee paid to be refunded to the resident's(s') estate.

Under the Choice Care Plan, if this agreement terminates within the ninety (90) days immediately following the residency date for any reason other than rescission, the Community shall issue a refund to the resident within thirty (30) days following the residency date of a new resident occupying the vacated unit, but shall not let more than one (1) year expire to refund to the previous

resident, after the unit was vacated. Such refund shall consist of the entrance fee paid to the Community by or on behalf of the resident without interest, less: (a) any costs incurred by the Community at the request of the resident that were set forth in writing in an addendum to the signed agreement; (b) any costs incurred to refurbish the unit for resale; and (c) any unpaid monthly service fees and other charges set forth on the monthly statement of charges.

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A. Corporate Governance

Pursuant to the Community's Charter and by-laws, management of the Community is to be vested in a Board of Directors comprised of at least nine (9) but not more than eleven (11) directors.

As of December 31, 2015, the Community's Board of Directors was comprised of the following eleven (11) members:

| <u>Name and Residence</u>            | <u>Principal Affiliation</u>                          |
|--------------------------------------|---|
| Jon Bos<br>Orchard Park, NY          | Owner,<br>Bos Business Consulting                     |
| Melinda Disare<br>Buffalo, NY        | Partner,<br>Schoeneck and King                        |
| David Donner<br>Snyder, NY           | Vice President,<br>Cape Ability Outrigger Ohana, Inc. |
| Donald Hayes<br>Orchard Park, NY     | Resident  |
| George Herbert<br>Orchard Park, NY   | Retired   |
| Richard Holmes<br>Orchard Park, NY   | Retired   |
| Gretchen Librock<br>N. Tonawanda, NY | Finance Operations,<br>HSBC Bank USA                  |
| Daniel Newcomb<br>Perrysburg, NY     | Retired   |
| Jill Ortner<br>Hamburg, NY           | Retired   |
| John Sherman<br>Tonawanda, NY        | Retired   |
| Ronald Witt<br>Orchard Park, NY      | Retired   |

The board of directors is required to meet six (6) times each year, of which, one (1) of the meetings is designated as the annual meeting. According to the Community's by-laws, the board of directors may hold special meetings as may be called by the President, upon a written request of one-third or more of the Directors, or on the written request of its sole Member, the United Church Home Society, Inc.

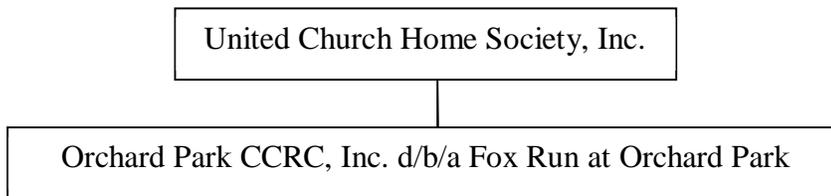
A review of the minutes of the meetings of the board of directors held during the examination period revealed that the meetings were generally well attended, with all of the directors attending at least one-half of the meetings they were eligible to attend.

The principal officers of the Community as of December 31, 2015, were as follows:

| <u>Name</u>        | <u>Title</u>            |
|--------------------|-------------------------|
| George Herbert     | President               |
| David Donner       | Vice President          |
| William Wlodarczyk | Chief Executive Officer |
| Jill Hausrath      | Chief Financial Officer |
| Jill Ortner        | Secretary               |
| Richard Holmes     | Treasurer               |

B. Corporate Structure

The Community is a member of the United Church Home Society, Inc. holding company system. The structure of the holding company system as of December 31, 2015 was as follows:



The Community is a corporation, defined under Section 102(a)(5) of the New York Not-For-Profit Corporation Law, organized exclusively for charitable purposes as a Type B corporation. The sole member of the Community is United Church Home Society, Inc. (“UCHS”).

The Community is a controlled entity of UCHS with control conferred through the Community's By-Laws. UCHS must approve any amendments to the Community's by-laws or Articles of Incorporation.

C. Occupancy Rates

The following reflects the occupancy rates at each year-end, for the period 2013 to 2015, for each service area within the Community:

|  | <u>2013</u> | <u>2014</u> | <u>2015</u> |
|--|-------------|-------------|-------------|
| Independent Living Units                             | 92.0%       | 93.0%       | 96.0%       |
| Enriched Housing (includes Adult & Memory Care Unit) | 94.1%       | 88.5%       | 86.5%       |
| Skilled Nursing Facility                             | 87.4%       | 94.0%       | 84.0%       |

For the years noted in the above schedule, the Community has steadily increased the occupancy rate for its Independent Living Units ("ILU"). The Community's independent living units' occupancy rate of 96.0% as of December 31, 2015 meets industry accepted benchmarks.

### 3. **FINANCIAL STATEMENTS**

The following statements show the assets, liabilities and actuarial surplus, as of December 31, 2015, as contained in the Community's 2015 filed annual statement presented on a statutory actuarial basis pursuant to Insurance Regulation No. 140 (11 NYCRR 350), and a condensed summary of operations with a reconciliation of the actuarial surplus account for the years under review.

The firm of Freed Maxick CPAs, P.C. of Buffalo, New York was retained by the Community to audit the Community's financial statements of financial position for the calendar years 2013, 2014, and 2015, and the related statements of operations and cash flows for the years then ended.

Freed Maxick CPAs, P.C. concluded that the 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.

A. Balance SheetAssets

|  |                           |
|--|---------------------------|
| Cash and investable assets               | \$ 23,505,918             |
| Accounts receivable and prepaid expenses | 1,183,746                 |
| Land                                     | 1,839,000                 |
| Land improvements                        | 4,829,427                 |
| Building                                 | 82,114,640                |
| Furniture, fixtures and equipment        | 7,139,454                 |
| Accumulated depreciation                 | (18,524,576)              |
| Deferred financing costs                 | 4,450,056                 |
| Deferred marketing costs                 | <u>1,079,121</u>          |
| <br>Total assets                         | <br>\$ <u>107,616,786</u> |

Liabilities

|   |                           |
|---|---------------------------|
| IDA bond reserve                          | \$ 47,342,900             |
| Actuarial reserve                         | 57,984,906                |
| Aggregate write-ins for other liabilities | <u>483,500</u>            |
| Total liabilities                         | \$ 105,811,306            |
| <br>Net actuarial surplus                 | <br>\$ <u>1,805,480</u>   |
| <br>Total liabilities and net surplus     | <br>\$ <u>107,616,786</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 Change in Actuarial Surplus

The statement of revenue and expenses is presented on a statutory modified GAAP basis for the three-year examination period, January 1, 2013 through December 31, 2015.

Revenue

|                                       |                |               |
|---------------------------------------|----------------|---------------|
| Monthly maintenance fees              | \$ 26,177,028  |               |
| Other revenue from residents          | 487,299        |               |
| Earned entrance fees (net of refunds) | 3,247,944      |               |
| Patient revenues from nonresidents    | 13,722,656     |               |
| Interest and dividend income          | 359,067        |               |
| Non-operating revenue                 | <u>205,515</u> |               |
| Total revenue                         |                | \$ 44,199,509 |

Expenses

|  |                |                       |
|--|----------------|-----------------------|
| Net change in obligation for future services     | \$ 1,377,000   |                       |
| Interest expense                                 | 7,328,347      |                       |
| Facility and dining expenses                     | 11,494,815     |                       |
| Health expenses                                  | 11,401,415     |                       |
| Administration expenses                          | 5,128,334      |                       |
| Depreciation and amortization charges            | 8,030,809      |                       |
| Change in provision for uncollectible accounts   | (96,000)       |                       |
| Real estate taxes and PILOT                      | 1,502,483      |                       |
| NYS health facilities assessment                 | 781,023        |                       |
| Aggregate write-ins for other operating expenses | <u>625,200</u> |                       |
| Total expenses                                   |                | \$ <u>47,573,426</u>  |
| Net (loss)                                       |                | \$ <u>(3,373,917)</u> |

### Change in Actuarial Surplus

The Community's actuarial surplus decreased \$(648,599) during the three-year examination period, January 1, 2013 through December 31, 2015, detailed as follows:

|   |                        |                        |                     |
|---|------------------------|------------------------|---------------------|
| Surplus, per report on examination, as of December 31, 2012 |                        |                        | \$ 2,454,079        |
|   | <u>Gain in Surplus</u> | <u>Loss in Surplus</u> |                     |
| Net loss  |                        | \$ (3,373,917)         |                     |
| Statutory adjustment as per examination*                    | \$ <u>2,725,318</u>    | \$ <u>0</u>            |                     |
| Net decrease in surplus                                     |                        |                        | \$ <u>(648,599)</u> |
| Surplus, per report on examination, as of December 31, 2015 |                        |                        | \$ <u>1,805,480</u> |

\*Note: This adjustment represents the difference between the net income pertaining to the statutory modified GAAP basis of accounting and the actuarial surplus.

#### **4. SUBSEQUENT EVENTS**

The Community has submitted a request to the New York State Department of Health ("DOH") to build an approximately 14,000 square foot expansion to its health center and to add ten skilled nursing beds to its existing fifty bed capacity.

The Community received a contingent approval letter for the project from DOH dated March 10, 2017, relative to the aforementioned expansion to the Plan's health center and the Plan's request to add an additional ten (10) beds to its skilled nursing facility. The approval of the assisted living portion and the overall project is still in process. According to the Community's proposal,

the expansion will increase the space for the skilled nursing home residents' dining room, therapy area, and provide additional private spaces within such skilled nursing home area.

## 5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination as of December 31, 2012, contained the following six (6) comments and recommendations (page numbers refer to the prior report on examination):

### ITEM NO.

### PAGE NO.

#### Conflict of Interest Statements

- |    |  |   |
|----|--|---|
| 1. | It is recommended that the Community complies with Article IX, Section 1(d) of its By-Laws and obtain signed conflict of interest statements annually from each of the members of its board of directors and its officers. | 9 |
|----|--|---|

*The Community has complied with this recommendation.*

#### Occupancy Rates

- |    |  |    |
|----|--|----|
| 2. | It is recommended that the Community continues to strive to achieve the industry benchmark occupancy rate of 95% relative to its independent living units. | 10 |
|----|--|----|

*The Community has complied with this recommendation.*

#### Information Technology

- |    |   |    |
|----|---|----|
| 3. | It is recommended that the Community maintains a service agreement with its IT vendor (Aurora) that details the terms of the contract, including agreed upon responsibilities, compensation, and other legal obligations between the parties. | 11 |
|----|---|----|

*The Community has complied with this recommendation.*

- |    |  |    |
|----|--|----|
| 4. | It is recommended, as a good business practice, that the Community periodically obtains SOC1 and SSAE 16 reports from the IT service vendor, MOZY, Aurora, and other third-party vendors who provide significant services. | 11 |
|----|--|----|

*The Community has complied with this recommendation.*

**ITEM NO.****PAGE NO.**Information Technology (cont.)

5. It is recommended that the Community complies with its computer back-up policy with regard to saving and restoring data by testing restoration capabilities on a periodic monthly basis. 12

*The Community has complied with this recommendation.*

6. It is also recommended that the Community maintains a log of the results of the testing along with dates of the testing, items tested, and the name of the individual(s) performing the testing. 12

*The Community has complied with this recommendation.*



NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, MARIA T. VULLO, 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:

**Hussein Agouda**

as a proper person to examine the affairs of

**Orchard Park CCRC, Inc. d/b/a Fox Run at Orchard Park**

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

**CCRC**

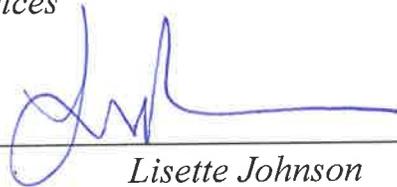
with such other information as he shall deem requisite.

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

this 13th day of December, 2016

MARIA T. VULLO  
Superintendent of Financial  
Services

By:



Lisette Johnson  
Bureau Chief  
Health Bureau

