

REPORT ON EXAMINATION

OF

GOOD SHEPHERD VILLAGE AT ENDWELL, INC.

AS OF

DECEMBER 31, 2016

DATE OF REPORT

November 1, 2018

EXAMINER

CHARLES McBURNIE

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

November 1, 2018

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

Madam:

Pursuant to the requirements of the New York Public Health Law, acting in accordance with the instructions contained in Appointment Number 31756, dated April 6, 2018, attached hereto, I have made an examination of Good Shepherd Village at Endwell, Inc., a not-for-profit fee-for-service continuing care retirement community certified pursuant to the provisions of Article 46-A of the New York Public Health Law, as of December 31, 2016, and respectfully submit the following report thereon.

The examination was conducted at the home office of Good Shepherd Village at Endwell, Inc., located at 2 Village Drive, Endwell, New York.

Wherever the designations the "Community" or the "Village" appear herein, without qualification, they should be understood to indicate Good Shepherd Village at Endwell, 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

This is the first examination of Good Shepherd Village at Endwell, Inc., which covers the three-year period from January 1, 2014 through December 31, 2016. Where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2016 were also reviewed.

The examination comprised a verification of assets and liabilities of the Community, as of December 31, 2016, in accordance with generally accepted accounting principles as filed with the Community's December 31, 2016 annual statement, 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 accountants. A review was also made of the following items:

- Community documents
- Compliance with By-laws
- Board of directors' meeting minutes
- Occupancy levels

The Community was audited annually for the years 2014 through 2016 by the accounting firm EFP Rotenberg, LLP ("EFPR"), though the firm changed its name to EFPR Group, LLC during 2015. The Community received an unmodified opinion in each of those years. Certain audit work papers of EFPR were reviewed and relied upon in conjunction with this examination.

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.

2. DESCRIPTION OF THE COMMUNITY

Good Shepherd Village at Endwell, Inc. is a fee-for-service continuing care retirement community (“CCRC”), as defined in Article 46-A of the New York Public Health Law. The Community received a Certificate of Authority from the New York State Continuing Care Retirement Community Council, effective August 9, 2007. The Community commenced operations on October 1, 2009.

Good Shepherd Village at Endwell, Inc., is a New York not-for-profit corporation and is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. The Village is governed by a board of directors and its directors are elected by FGS, Inc, its sole member.

The Village is a fee-for-service continuing care retirement community constructed on approximately 120 acres in the Town of Union in Broome County, New York. The Village includes Independent Living Units (“ILU”) consisting of 154 residential housing units, of which, 74 are cottages and 80 are apartments. The residential housing units range in size from one-bedroom to large two-bedroom units.

In addition, the Village includes a Health Center comprised of a 32-bed Assisted Living residence, of which 16 beds are reserved for special needs residents and a 32-bed Nursing Care

Facility. The Assisted Living residence and Nursing Care Facility have dining rooms, residence lounges, activity areas, and other support services spaces.

Additionally, the Community contains a Village Center, which includes dining rooms and café, library, activity areas, auditorium, barber/beauty shop, administrative offices, resident lounges, and other public gathering areas. The Village Center also houses a Wellness Center comprising an indoor swimming pool, spa, and fitness center.

A. Corporate Governance

The sole member of the Corporation is FGS, Inc., d/b/a Good Shepherd Communities (“Good Shepherd Communities” or “GSC”).

Pursuant to the Community’s charter and by-laws, the affairs of the Corporation are managed and conducted by a board of directors consisting of no less than thirteen (13) and no more than twenty (20) persons, at least 18 years of age. Directors whose terms expire are replaced via resolution of the Board of Directors of Good Shepherd Communities at their organizational meeting each calendar year. Directors, other than ex-officio directors, serve a four-year term or until they are replaced. Directors who have served three consecutive four-year terms are not eligible for election to the board for a period of one year following the completion of the third full four-year term.

The Board of Directors of Good Shepard Village at Endwell is composed of the President/Chief Executive Officer of GSC and up to nineteen (19) board members. The preference in selecting directors is to develop a wide range of skills, including backgrounds in

law, engineering, academia, human resources, corporate management, finances, medical, and faith-based and community-based persons.

The board meets at least four times per year on dates selected by the board at an hour and place designated by the Chairperson, and on such other occasions as the Chairperson considers proper.

Additionally, the board is required to hold an annual organized meeting at such date, time and place as the board may determine and at least four times per year.

Special meetings of the board of directors, at which any business may be considered, may be called by the Chairperson. Special meetings are also called upon written request of not less than three members of the board, the notices thereof to state the business to be considered.

<u>Name</u>	<u>Principal Affiliation</u>
Jill Andrews Binghamton, NY	Registered Nurse, SUNY Broome
Kathleen Bunnell Binghamton, NY	Retired, Former Director of Broome County Office
Linda Glajch Endicott, NY	Board member, First Presbyterian Church of Endicott
Lawrence Harris Endicott, NY	Business Banking Market Manager, Citizens Bank
Douglas Johnson Binghamton, NY	Retired
Michael Keenan, Binghamton, NY	President and CEO, Good Shepherd-Fairview Home

<u>Name</u>	<u>Principal Affiliation</u>
Joan Lacey Binghamton, NY	Financial Secretary, Trinity Memorial Church
Paul Mollo Endicott, NY	Director of Pharmacy, Lourdes Hospital
JoAnn Navarro Endwell, NY	Vice President of Operations, Binghamton University
Mark Patterson Endwell, NY	President, Vestal Tile Distributors
Patricia Reuther Endwell, NY	Director of Innovative Simulation, Binghamton University
Oliver Riley Endwell, NY	Founder, Riley Maintenance Systems, Inc.
Thomas Sylvester Endwell, NY	Retired
Kenneth Tomko Binghamton, NY	Partner, Hinman, Howard & Kattell, LLP

A review of the attendance records of the board of directors' meetings held during the period under examination revealed that there was a quorum at each such meeting, however, it was noted that seven board members failed to attend at least one-half of such board meetings they were eligible to attend.

Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the Community. It is essential that board members attend meetings consistently and set forth their view on relevant matters so that appropriate decisions may be reached by the board.

It is recommended that board members who are unable or unwilling to consistently attend meetings resign or be replaced.

It was noted during the review of the board minutes that there is no record within the minutes to show changes to the board membership.

It is recommended as a best practice, that the board minutes describe board member changes and the relevant dates of those changes.

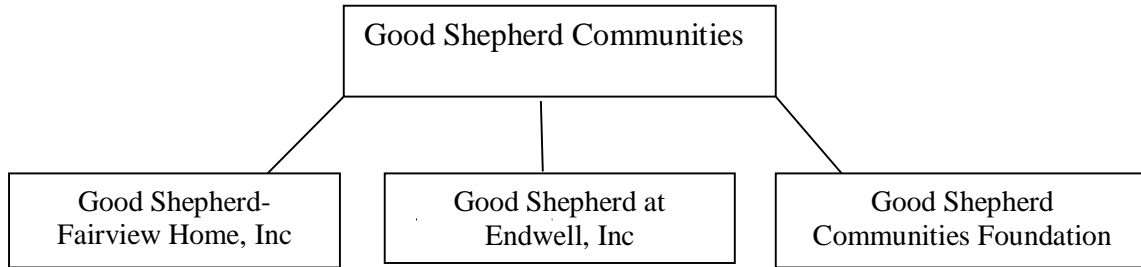
It was also noted that the most recent class offered by the Village was to educate residents on methods to protect themselves from the many risks they face when accessing the internet was in 2012.

Because of the vulnerability of the Village's population, it is recommended that the Village periodically offer classes to its residents on methods to protect themselves from the many risks they face when accessing the internet.

The principal officers of the Community as of December 31, 2017 were as follows:

<u>Officers</u>	<u>Title</u>
Joanne Navarro	Chairperson
Joan Lacey	Vice-Chairperson
Michael Keenan	President and CEO
Linda Glajch	Secretary
Paul Mollo	Treasurer

B. Holding Company System



Good Shepherd Village at Endwell is affiliated with the following entities:

- (1) Good Shepherd Communities (“GSC”), its sole member and passive parent. GSC is a New York not-for-profit corporation that operates planning and development of facilities and services to enhance the life of elderly adults;
- (2) Good Shepherd Communities Foundation, is a New York not-for-profit corporation, and provides financial support to, Good Shepherd Communities and Good Shepherd-Fairview Home, Inc and Good Shepard Village Endwell.
- (3) Good Shepherd-Fairview Home, Inc., is a New York not-for-profit corporation, which operates apartments, an adult care facility, assisted living program, licensed home health care agency and a skilled nursing facility, each located in Binghamton, New York.

No other organization, including Good Shepherd Communities, Good Shepherd-Fairview Home, Inc., and Good Shepherd Communities Foundation, has any financial responsibility for Good Shepherd Village at Endwell.

During the examination period, Good Shepherd Village at Endwell, Inc. maintained a Management Agreement with Sodexo Operations, LLC, a Delaware Limited Liability Company. This agreement was approved by the Department of Health.

Sodexo Operations, LLC (“Sodexo”) provides dining and hospitality services to the Village. Sodexo is authorized to make the necessary expenditures to prepare for and to commence the stated services. All expenditures are agreed upon by Sodexo and Good Shepherd Village at Endwell in advance. The term of the Management Agreement is ten years, which began January 1, 2012, and continues thereafter until termination by either party.

C. Plan of Operations

The consideration paid for entering into a contract and becoming a Good Shepherd Village at Endwell resident consists of an entrance fee and a monthly maintenance fee. The amount of these fees varies based upon apartment type and contract type.

Entrance Fee Deposit

Each prospective resident is required to pay a 10% Entrance Fee Deposit upon signing a contract. The balance of the entrance fee (90%), as disclosed within the Initial Disclosure Statement, is due and payable upon the designated occupancy date or upon actual occupancy whichever is earlier. The entrance fee is paid according to the type of living accommodation that was selected. In the event of double occupancy of the residence, if one occupant deceases or withdraws from the Community, the Entrance Fee will be attributed to the occupant remaining as a Resident, and no refund will be payable to the estate of the occupant who perishes or to the occupant who first withdraws.

Refund of Entrance Fee (Before Occupancy)

In accordance with the Notice of Right to Rescind, in the event a Resident rescinds the agreement within seventy-two (72) hours, any entrance fee, including earned interest or other payments, is refunded in full within three (3) days. In the event the Resident is precluded from taking occupancy because of death, illness, injury, or incapacity (herein “preclusion”) before the occupancy date, the contract is automatically terminated and the Village is to make a full refund including earned interest, less the amount of any costs specifically incurred by the Village at the Resident’s request, within thirty (30) days of the Village receiving notice of the resident’s preclusion.

Refund of Entrance Fee (After Occupancy)

In the event the Resident dies or otherwise surrenders occupancy of the unit to the Village within ninety days of occupancy, the entrance fee will be refunded in full to the Resident or the Resident’s estate, less any unpaid balance or any specifically required cost set forth in an addendum to the contract less the actual cost, if any, of refurbishing the residence for occupancy by the next Resident. The monthly fee will be prorated to the termination date and any unearned portion will be refunded to the Resident or Resident’s estate.

After ninety days, the entrance fee is reduced by (a) a one-time four percent (4%) administrative fee; (b) a monthly two percent (2%) occupancy fee, up to a maximum of ten percent (10%), plus the unpaid balance, if any, of any specifically required costs set forth in an addendum to their contract, and the actual cost, if any, of refurbishing the residence for

occupancy by the next Resident. Any refund will include a prorated portion of the monthly fee.

During the examiner's review of a sample of Resident contracts, it was noted that the resident entrance fees were calculated properly and it was confirmed that the Community verified the Resident's financial situation. Applicants were not tested regarding their physical/mental health.

The examiner then tested the timeliness of refunded entrance fees during calendar year 2016. According to the listing prepared by the community, there were sixteen residents that left the facility in 2016. Repayment of entrance fees are due within 30 days of the re-occupancy of the unit by a new Resident. A test of the timeliness of the refunds revealed no exceptions.

Monthly Fees

After the contract is endorsed and the entrance fee is paid, the Resident is subject to a monthly maintenance fee that is prorated for any partial month for which the Resident begins or ends occupancy. The amount of the Monthly Fee is based in part on the model and size of the residence and the number of persons occupying the residence and receiving services. In situations of double occupancy, the second person Monthly Fee is added to the Monthly Fee and references to the monthly Fee are meant to include a reference to the additional Second Person Monthly Fee. The Community is required to give sixty (60) days written notice before increasing the amount of the Monthly Fee. Changes in fees for such FFS CCRC are not regulated or approved by the Department of Health or the Department of Financial Services.

Additional Services

The Resident is responsible for the cost of services beyond those allowed under the terms of the contract, including the costs associated with the Resident's personal physician, private duty nurse, other privately prescribed therapies, and prescription drugs. The Resident is also responsible for costs associated with stays at a hospital.

Nursing Facility, Enhance Assisted Living Residence and Special Needs Assisted Living Residence)

The Community's Health Center consists of Assisted Living residences, a nursing facility and respective support services.

The resident costs for the assisted living facility and nursing facility services are an additional charge and are not included in the Monthly Fee. In the event there is insufficient space available in the Health Center when the Resident requires such services, the Village may transfer the Resident to an outside facility for a temporary period, until such time as a nursing facility bed or assisted living facility room becomes available at the Community Health Center.

Transportation is provided by the Community for a Resident in an apartment or cottage who requires transportation to another facility within Broome County due to the unavailability of accommodations in the Community Health Center. A Resident who is offsite (i.e., acute care, hospital, physician's office, etc.) is responsible for their own transportation costs, whether to a village facility or other facility.

3. COMMUNITY DEMOGRAPHICS

A. Occupancy Levels

The following reflects the occupancy rates at each year end 2013–2016 for each of the facilities within the Community:

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Independent Living Units	93.10%	92.85%	91.92%	91.43%
Assisted Living	92.95%	90.74%	90.82%	92.64%
Skilled Nursing Care	99.49%	97.19%	96.64%	97.30%

B. Fee Increases

Between 2013-2016 fees for the Community increased as follows:

	2013	2014	2015	2016
Entrance fee	3.0%	2.0%	0%	0%
Maintenance	4.0%	4.0%	4.0%	3.0%
Second Person	4.0%	4.0%	4.0%	3.0%

4. **FINANCIAL STATEMENTS**

The following statements show the assets, liabilities and surplus as of December 31, 2016, as contained in the Community's 2016 filed financial statements. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Community's financial condition as presented in its financial statements filed as of December 31, 2016.

Independent Accountants

The Community was audited annually for the years 2014 through 2016 by the accounting firm of EFP Rotenberg, LLP ("EFPR"), though the firm changed its name to EFPR Group, LLC during 2015. The Community received an unmodified opinion in each of those years.

A. Balance SheetAssets

Cash and cash equivalents	6,727,393
Accounts receivable	568,128
Residency fee receivable	179,999
Due from third party payors	12,872
Prepaid expenses and other current assets	152,408
Property and equipment-Net	44,460,460
Assets whose use is limited*	5,614,220
Intangible assets	<u>822,839</u>
Total assets	\$ <u>58,538,319</u>

Liabilities

Debt-Current portion	1,360,000
Accounts payable and accrued expenses	480,119
Deferred rent revenue	133,531
Refundable residency fees	441,671
Due to related parties	61,409
Deposits on unoccupied units	255,350
Deferred residency fee revenue	1,721,324
Refundable residency fees	27,920,681
Debt – Net of current portion	42,923,635
Resident deposits	<u>1,879</u>
Total Liabilities	<u>75,299,599</u>
Total Surplus	<u>(16,761,280)</u>
Total Liabilities and Surplus	\$ <u>58,538,319</u>

* The account “Assets whose use is limited” consists of the following subaccounts:

- Collateral account used to pay debt service
- Debt service reserve fund
- Deposits on unoccupied units
- Entrance fee fund
- Resident funds held in trust

B. Statement of Revenue and Expenses and Change in SurplusOperating revenue

Monthly Maintenance fees	\$ 32,857,471	
Residents Service Revenue	42,381,013	
Earned residents' fees	3,002,408	
Bad debts expenses	<u>(237,180)</u>	
Total operating revenue		\$78,003,712

Operating expenses

Salaries	\$ 17,817,337	
Supplies and others	22,899,279	
Interest expenses	16,526,356	
Depreciation	13,998,773	
Employee Benefits	6,724,636	
Professional fees	5,511,094	
Management Services	6,698,698	
Cash receipts assessment	2,176,822	
Amortization	832,754	
Contract employment - nursing	1,144,043	
Property expense	1,129,082	
Total operating expenses		<u>\$95,458,874</u>
Net Gain/Loss		\$ <u>(17,455,162)</u>

Change in Surplus

Surplus decreased \$16,761,280 during the three-year period January 1, 2014 through December 31, 2016, detailed as follows:

Surplus, as of January 1, 2014			\$	2,217,098
	<u>Gains in</u>	<u>Losses in</u>		
	<u>surplus</u>	<u>surplus</u>		
Net income/loss		\$(17,455,162)		
Grant from the Foundation	539,334			
Gain on interest rate swap	258,520			
2010 Restatement	777,721			
Interest income	1,163,924			
Unrealized Losses on assets whose use is limited		(588,230)		
Realized losses on assets whose use is limited		(5,609,523)		
Community Scholarships and grants	1,927,335			
Net assets released from restrictions	<u>7,703</u>			
	4,674,537	\$(23,652,915)		<u>(18,978,378)</u>
Surplus, per report on examination, as of December 31, 2016			\$	<u>(16,761,280)</u>

C. Revenue Recognition

As described earlier, residency fees are due in two installments. Ten percent (10%) of the residency fee is due when the residency agreement is signed, while the remainder is due prior to occupancy. Ninety percent (90%) of the residency fee is fully refundable and is accounted for as a liability. The remaining ten percent (10%) of the residency fee is accounted for as deferred residency fee revenue and is amortized to income using the straight-line method over the estimate life of each resident. The period of amortization is adjusted annually, based on the actuarially estimated remaining life expectancy of each resident.

Monthly service fees are billed in advance and are recognized as income in the month they are earned.

Deposits on unoccupied units are held in escrow until the unit is occupied, at which time the funds are released for operations. At December 31, 2016 and 2015, deposits on unoccupied units were \$255,350 and \$169,350, respectively.

Section 4658(3) of the New York Health Law states in part:

“Sixty days before commencement of each calendar or fiscal year or official opening date, whichever is applicable, each operator shall file with the Commissioner a computation of the annual long-term debt service and a projected annual revenue and expense summary for the next ten years.”

The Community noted that it did not submit the above required filing of long term debt, and further noted that it failed to submit an annual decennial summary projection of revenue and expenses after the original submission.

It is recommended that the Community comply with the requirements of Section 4658 (3) of the New York Public Health Law by filing a computation of the annual long-term debt service and decennial projected annual revenue and expense summary.

5. DISCLOSURE STATEMENT

The marketing materials provided to prospective residents, including the Disclosure Statement, were reviewed by the examiner. During the review, it was noted that the Disclosure Statement included all the requirements of Section 4657 of the New York Public Health Law.

6. **SUMMARY OF COMMENTS AND RECOMMENDATIONS**

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A Corporate Governance	
i It is recommended that board members who are unable or unwilling to consistently attend meetings resign or be replaced.	7
ii. It is recommended as a best practice, that the board minutes describe board member changes and the relevant dates of the changes.	7
iii. It is recommended that the Village periodically offer classes to its residents on methods to protect themselves from the many risks they face when accessing the internet.	7
B <u>Revenue Recognition</u>	
It is recommended that the Community comply with New York Department of Health Section 4658(3) by filing a computation of the annual long-term debt service and decennial projected annual revenue and expenses summary.	18

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:

Charles McBurnie

as a proper person to examine the affairs of

Good Shepherd Village at Endwell

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 6th day of April, 2018

MARIA T. VULLO
Superintendent of Financial Services

By:



Lisette Johnson
Bureau Chief
Health Bureau

