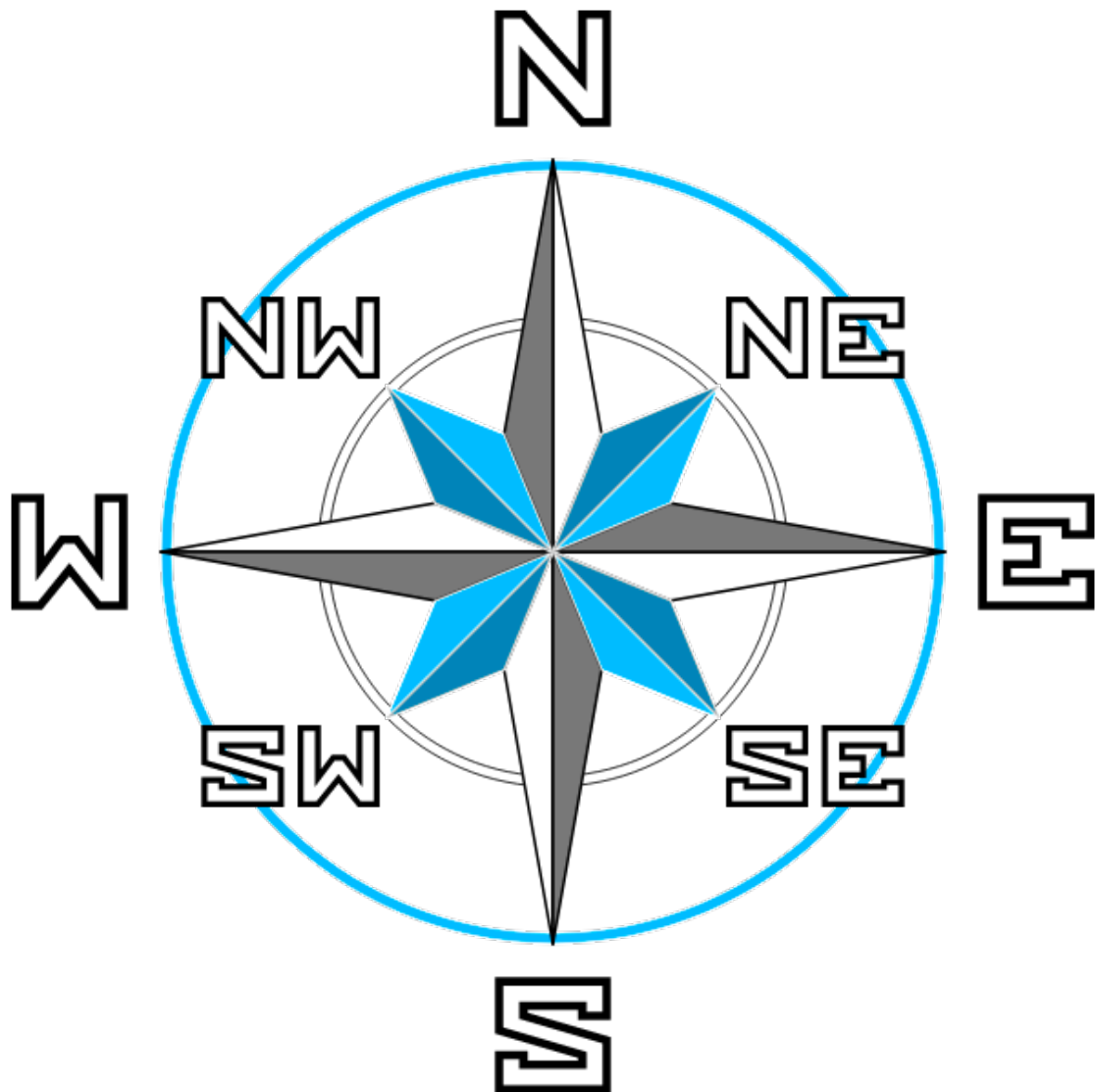


# North Star Senior Collaborative

Is it the right direction?

A resident perspective



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## **PREFACE**

This is a resident perspective on North Star. It is not “the” resident perspective, because, as is always the case, we have many residents with multiple points of view. But this does represent the perspective of multiple residents.

The purpose of this document is primarily educational; to fill in some context and some analysis that comes from a different point of view than management’s perspective. Clearly, much of this falls into the category of opinion. When it comes to business strategies, there is no one definitive answer, and usually there are multiple options to consider.

This document makes no recommendation one way or another about North Star. Instead it raises concerns about some of the rationale for North Star, the risks of North Star, and the lack of a robust discussion with residents of alternatives to North Star. My hope is that this will promote a more informed communication between residents and management and the RVI Board of Directors.

One caveat: I am not an accountant nor an attorney, but I am an experienced business executive in both the for-profit and nonprofit worlds. What follows is a layperson’s perspective.

Steve Morris

## **CORRECTIONS**

Previous versions of this document stated that Rose Villa has no written conflict of interest policy; that was incorrect.

## **EXECUTIVE SUMMARY**

This document is a resident perspective on the North Star Senior Collaborative (North Star). Rose Villa plans to invest in North Star and has suggested that a number of potential benefits would result. There are, however, also substantial risks.

In 2019, Rose Villa incorporated the North Star Senior Collaborative (initially under a different name) to become the parent company (or “sole member”) of Rose Villa Inc.

### **Why North Star was Created?**

Many reasons have been offered to justify the need for North Star. As discussed in this document, there are serious concerns about all of them. There has been a general claim, or at least implication, that surviving as a single-site CCRC is not viable. Other claims include:

- North Star is a way to retain Vassar
- Rose Villa must grow to survive
- North Star would protect Rose Villa from a hostile takeover
- Cost savings would be significant
- It is a way to attract and retain employees
- It is a source of temporary help
- It would provide a reduced cost of capital
- It would avoid the disadvantages of operating at a small scale
- Altruism: share with others the benefits we enjoy
- Safety in numbers

Concerns about each of these are covered in the body of this document.

### **How Rose Villa will Fund the “Seed” Investment in North Star**

Resident fees will be the source of the initial investment in North Star. According to bond agent Mary Muñoz, Rose Villa could lend North Star as much as \$10 million from its reserves. Those reserves come from resident member fees (buy-ins) and from excess operating income, virtually all of which comes from residents’ monthly fees.

### **Potential Risks North Star Poses to Rose Villa**

Among the risks to Rose Villa are these:

- Rose Villa could lose all of its initial loan to North Star
- North Star could require Rose Villa’s assets as bond collateral
- A North Star default could expose Rose Villa, despite corporate separation, if a court ruled them effectively identical.
- Lack of management attention on Rose Villa deterioration: Vassar’s focus on North Star would deprive Rose Villa of strong leadership.
- North Star lacks responsibility to Rose Villa. Its structure offers no guarantee of preferential treatment and implies instead that Rose Villa would become one of several uniform properties.

## **Alternatives to North Star**

The myth is that doing nothing is risky. No evidence has been offered that this is true, but if even we suppose that there is value in a federation of CCRCs, a viable and much less risky option would be to join one of the many credible existing nonprofit CCRC management companies. And it is equally viable for Rose Villa to remain independent and explore other ways to strengthen stability.

## **Do Residents have a Say in the North Star Investment?**

Other than having a vote on the Rose Villa Board of Directors, residents have no official say in the North Star investment. There are cases where residents at other CCRCs have successfully pursued legal action to restrain a CCRC's ability to raise resident fees in order to fund other CCRCs. Rose Villa also needs resident support to continue to attract new residents, so a sufficient amount of resident dissatisfaction could potentially influence the North Star strategy. However, both legal actions and going public with resident dissatisfaction have serious risks and drawbacks.

## 1. OVERVIEW: Origin of North Star concept

North Star was created at the end of 2019 (under its earlier name VL Services). The June 25, 2020 Bond offering document states:

Rose Villa is planning for future growth and is forming a parent company structure. VL Services ("VLS"), an Oregon nonprofit corporation, was created in December 2019. Management of VLS intends to file an application with the Internal Revenue Service in 2020 to become a 501(c)(3) corporation. Upon completion of the corporate restructuring, VLS will become the sole corporate member of Rose Villa... Initially, the Board of Directors of VLS will be the persons on the Executive Committee of Rose Villa.

The purpose of VLS is to provide a platform for expansion while shielding the Rose Villa community from risk. VLS seeks to expand the number of lives served through growth in operations beyond its initial site at Rose Villa in Portland, Oregon. VLS aspires to create a comprehensive network of services providing support for elders from a wide diversity of backgrounds, income levels, and experiences to live the life of their choosing. Not only does VLS seek to use the experience of community living at Rose Villa as a model to be grown in other locations, VLS seeks to use the core beliefs and operating principles on which that model is founded to grow other types of businesses and communities serving elders. The fundamental purpose of VLS is to restore elders to their rightful place as drivers in the lives they create, recognizing and celebrating their wisdom, strength, courage, and leadership.

As of the date of this Official Statement, neither VLS nor Rose Villa has entered into any letters of intent, affiliations, or partnerships. Management of Rose Villa anticipates that approximately \$850,000 will be transferred from Rose Villa to VLS over the next five years. Such transfers would be subject to the covenants set forth in the Master Indenture.

Note: the \$850,000 estimate was made in 2020. In 2022 a representative of Rose Villa's bond agency stated that at least a \$3 million to \$5 million investment (or more) would be likely. She said that a similar deal she was working on at that time required \$10 million.

## **2. BACKGROUND: Member vs Non-Member Nonprofit**

The bond document states that North Star “...will become the sole corporate member of Rose Villa”. Currently, Rose Villa is a non-member nonprofit. What does that mean?

A nonprofit incorporated in Oregon is either a member or a non-member nonprofit.

- A non-member nonprofit is governed by a Board of Directors that recruits new Directors to the Board and, if needed, removes Directors. Public charities are commonly nonmembership organizations. Rose Villa Inc. today is a non-member nonprofit.
- In a member nonprofit, there are one or more members, though the term “owner” would be more descriptive. Members (owners) may have significant power, such as the right to appoint and remove directors, change the bylaws, or dissolve the nonprofit. The typical member nonprofit serves a smaller population, such as a trade association, country club, fraternity, or neighborhood association. For example, companies in a particular trade might “buy in” to a trade association where they become one of many members (owners). The members vote to decide who is on the corporation’s Board of Directors.
- It is possible to have a single member non-profit, in which the single member may have the right to appoint the board of directors, remove directors, change the bylaws, or dissolve the nonprofit. However, a nonprofit’s Articles and Bylaws can also limit the power of the member or members.
- The plan is for Rose Villa to become a one-member nonprofit with North Star the member. Vassar has stated that the intent is for the Rose Villa Board to retain some level of independence, such that North Star does not control who is on the Rose Villa Board. No details of that structure have been released.

## **3. BACKGROUND: Overlapping Boards of Directors**

The bond document states that initially the Rose Villa Directors on the Executive Committee will be on the North Star Board. It is not unusual to have overlapping Boards in health-care and senior living corporations, but the inherent conflict of interest created by overlapping Boards is typically addressed in a Conflict of Interest policy.

Rose Villa's Conflict of Interest policy calls for disclosure of potential conflicts as required by the State of Oregon, and refers to Oregon statutes regarding conflict of interest. Rose Villa is not following the US District Court [Stern](#) case, which set the precedent for dealing with business transactions between companies that share Directors. The ruling stated that:

**"each director or trustee of a charitable hospital organized under the Non-Profit Corporation Act of the District of Columbia, D.C.Code § 29-1001 et seq., has a continuing fiduciary duty of loyalty and care in the management of the hospital's fiscal and investment affairs and acts in violation of that duty if... he actively participates in... or votes in favor of a decision by the board or any committee or subcommittee thereof to transact business with himself or with any corporation, partnership or association in which he holds a position as ... director. "**

In other words, a Rose Villa Board member who is also on the North Star Board should not participate in any discussion or vote involving a business transaction with North Star.

The [Oregon Department of Justice nonprofit board handbook](#) guidance states that a nonprofit board written policy regarding conflict of interest should include a requirement for conflicted directors to recuse themselves from voting.

The overlapping Boards could create liability issues as discussed below.

#### **4. BACKGROUND: Rogue Valley Manor**

Rogue Valley Manor and PRS is one example of what can go wrong when a CCRC creates a parent company. In 1990 the management of Rogue Valley Manor, a successful CCRC in Medford, created Pacific Retirement Systems (PRS), an "umbrella" entity that would manage multiple investments. Rogue Valley's structure was changed to being a member nonprofit, with PRS being the sole member. PRS controlled membership of the Rogue Valley Board. No doubt, the Board assumed it would receive fair if not preferential treatment, since, after all, it created PRS in the first place.

Thirteen years later, PRS built a new CCRC in Seattle, and then a second in Portland (both called "Mirabella"). Today PRS manages 25 affordable housing communities and 12 CCRCs.

How did PRS do that? In 2011, PRS started charging Rogue Valley residents more than the "at cost" management fee they had been promised. The Rogue Valley Board began to investigate, whereupon PRS fired many members of the Rogue Valley Board.



In 2013, Rogue Valley Manor residents hired an attorney, raised over \$200,000 dollars for legal fees, and built a class action suit compelling enough to persuade PRS to accept a settlement that greatly reduced PRS “sole member” control over the Rogue Valley Board. Here the complete story at: <https://bit.ly/3u4sXXK>

Rogue Valley Manor’s legal case depended on Oregon elder abuse law, which can lead to treble damages and broad avenues to relief. They claimed that PRS abused residents because they promised to provide management services at-cost, and it was clear that they were charging much more than cost.

## 5. HOW ROSE VILLA WILL FUND THE NORTH STAR INVESTMENT

Rose Villa has only three significant sources of funds:

1. **Existing bond proceeds.** However, those dollars are committed to Phase 2 and 3 construction. We are quite sure the bond investors would not be pleased if their money were redirected to some entirely new, unproven project.
2. **Buy-in fees from future residents.** But those must already be earmarked for paying off the existing bonds.
3. **Excess cash from operations.** This results when revenues exceed expenses, and virtually all revenues come from our monthly fees.

Paul Wathen, the Association Treasurer (and a CPA) concluded that operations generated roughly \$5 million per year in excess cash in 2020 and 2021, and that Rose Villa reserves appear to have increased by roughly that amount. If the \$10 million increase in cash reserves was intended for North Star, that reserve came from us.

In short, fees from residents beyond what is needed for maintaining campus operations are the source of funding for North Star. Residents who came to Rose Villa in Phase 2 or earlier believed from the marketing messaging and the RV contract and RV’s licensing that we were investing in a one-site CCRC. As it turns out, we were also investing in a startup investment fund.

To put the reserve for North Star into perspective, the 7.75% increase in monthly fees that residents will pay in 2023 will generate roughly \$1.4 million in incremental cash in 2023. A reserve much larger than that will be required to fund the multiple millions required for North Star “seed money.”

## **6. POTENTIAL RISKS TO ROSE VILLA POSED BY NORTH STAR**

### **A. Rose Villa Could Lose Millions in Seed Money**

The **short term** risk is the “seed money” loan from Rose Villa. Mary Muñoz, representing Rose Villa’s bond agent Ziegler, estimates that this loan would need to be \$5 million to \$10 million for site acquisition, planning and permits, architects, and all of the other preliminary expenses necessary before bond investors could be approached. In theory this loan would be repaid eventually, but if the project failed at this stage it could be lost irretrievably. However, although painful, this would not be fatal to Rose Villa.

In the **long term** Rose Villa could be exposed to far greater potential liability. Some of the foreseeable possibilities are:

### **B. North Star Bond Funding Could Require Rose Villa Backing**

North Star is an entity with no revenue, no operating history, and no staff. It is highly unlikely that bond investors would consider investing in such an entity without a guarantee from someone else. If Rose Villa were required to become a guarantor of North Star bonds, it would be exposed to much larger liability.

### **C. Corporate Separation May Not Shield Rose Villa from North Star Liabilities**

North Star is set up as a separate corporation to protect Rose Villa in the event of a North Star default. However, Rose Villa and North Star have overlapping management and boards. If North Star creditors pursued Rose Villa, a court might rule that they are substantially the same organization, exposing Rose Villa to North Star’s liabilities.

Rose Villa’s conflict of interest policy does not follow the U.S. District Court *Stern* decision which would require directors serving on both the Rose Villa and North Star boards to recuse themselves from discussing and voting on business affecting both. This provides a dissatisfied North Star creditor the opportunity to argue that the corporate separation between Rose Villa and North Star is a sham, that in reality they are acting as one entity, and that therefore the creditor should be able to seek satisfaction of North Star debt from Rose Villa.

## **D. Lack of Focus on Rose Villa**

A different risk arises from the focus of Rose Villa management and resources on North Star to the detriment of conditions here at Rose Villa. Examples include Marketing, which is involved in North Star due diligence while five classic cottages stand vacant. Paint is fading. Fences look shabby. Preventive maintenance languishes. RV reserves are spent on North Star instead of capital improvements and maintenance here.

The Board and management need to focus on upkeep and innovation at Rose Villa. If they fail to do so, Rose Villa risks becoming uncompetitive, with declining occupancy rates that could jeopardize financial security with or without North Star.

## **E. Risk of North Star Changes in the Long Term**

A final risk category involves North Star governance change over time. There is no guarantee that in ten years Vassar will still be CEO of North Star, or that the Rose Villa Board members will hold a majority on the North Star Board, or whether that will even matter. In ten years, North Star may be governed by entirely new directors and a new CEO. Rogue Valley Manor discovered that after 12 years PRS no longer considered Rogue Valley entitled to any special protection, and that could happen to Rose Villa as well.

## **7. CLAIMED BENEFITS OF NORTH STAR TO ROSE VILLA**

Below are the principal claims that have been made regarding the benefits that would accrue from the North Star Senior Collaborative. The benefits to North Star itself seem clear enough: diversified income stream from multiple CCRCs, safety in numbers, access to capital. The benefits to Rose Villa, if any, are more difficult to discern.

### **A. It's a Way to Retain Vassar**

This explanation was offered by an RVI Board member. The premise seemed to be that Vassar requires greater challenges than those provided by managing Rose Villa, and her departure must be avoided. However, if North Star proceeds Vassar will be the CEO of North Star, not of Rose Villa, so North Star is really not a strategy for retaining her even if that goal has merit.

### **B. Grow vs do nothing.**

In her Sep. 2022 Council presentation, Vassar stated:

I have not said that North Star is risk-free. Doing nothing however is a choice and it is risky.

But this is a misleading choice. Doing nothing is not the alternative. Growth is one strategy for innovation, but there are many others. Rose Villa will always need to innovate and experiment to ensure that it stays relevant and competitive, but to suggest that growth via North Star is the only way for Rose Villa to survive and thrive is false and unrealistic.

### **C. Rose Villa's interests will be paramount**

Vassar told the Resident Council in September: "It makes sense that, certainly at the beginning, since the executive committee of the Rose Villa Board is making this happen, the interests of Rose Villa are ... paramount as we move forward".

Encouraging words, perhaps, but as we have seen Rose Villa Board members serving on the North Star Board provides no guarantee that Rose Villa concerns will be "paramount". In fact, overlapping Boards are problematic absent certain conflict of interest policies, although adding such policies would further diminish Rose Villa's influence. In the [Stern](#) case, a U.S. District Court determined that **a director ... acts in violation of [his fiduciary] duty if he actively participates in or votes in favor of a decision by the board to transact business with any corporation in which he holds a position as director**". The finding certainly seems to apply to Rose Villa and North Star.

Furthermore, according to the [Oregon Department of Justice Guide to Non-profit Board Service in Oregon](#), nonprofit Board members have 3 legal duties:

1. The *Duty of Care* to act with the care of an ordinary, prudent person
2. The *Duty of Loyalty* to give their **undivided loyalty to the charitable corporation**
3. The *Duty of Obedience* to follow the organization's governing documents, to **carry out the organization's mission**, and to ensure that funds are used for lawful purposes

Were a North Star Board member to make Rose Villa's interests paramount, he would violate his Duty of Loyalty, and perhaps his Duty of Obedience as well. As North Star grows it will take on its own life, its management and board members will change, and to assume that Rose Villa's interests will su-

persede North Star's is not only unrealistic but would assume that North Star board members would violate their legal duties.

#### **D. Protection from a hostile takeover.**

“Avoiding a hostile takeover” was cited by an RVI Board member as a justification for North Star. However, it is virtually impossible that this could happen. A for-profit public company can be taken over by another company's purchasing enough stock to gain control of the Board, but that can't happen to a 501(c)(3). There is no stock to buy. The Board must deliberately decide to become a member non-profit, and to make another company the sole member.

It's true, of course, that a nonprofit in serious financial difficulty can go out of business or agree to be taken over by someone with deep pockets. But Rose Villa could get into financial trouble with or without North Star, and if that occurred it's not clear what benefit North Star would offer. Subsidizing unhealthy CCRCs would not be a winning strategy for North Star.

#### **E. Cost savings**

The argument is that North Star will be able to employ a CEO, CFO, attorney, etc. and share the cost among multiple CCRCs. Similarly, investments in technology and other operating expenses could be shared. These are fundamentally cost-reduction arguments.

The case-study history of cost reductions in mergers and other corporate combinations is mixed at best. (For example, the article [\*Mergers and Marginal Costs: New Evidence on Hospital Buyer Power\*](#) describes a study of hospital mergers and their effect on cost. The conclusion: there was “**limited evidence of actual savings**”, and “savings, when they occur, **tend to be local**, and potential benefits of savings may be **offset by managerial costs** of merging”.) So, while cost reductions through shared management sound good, actual case studies do not back that up. Organizations such as North Star add people and overhead which offsets any actual savings.

#### **F. Help attract and retain employees**

The argument is that a single CCRC offers prospective employees limited growth paths, but as one of a group of CCRCs under North Star, Rose Villa employees would have access to many opportunities, inducing them to remain within the North Star group. This might be a recruiting advantage, but whether we lose an employee to a different CCRC in the group or to some

entity outside of the group, Rose Villa has lost the employee. North Star would provide no benefit to Rose Villa in addressing a key Rose Villa challenges which is retaining employees.

### **G. Borrowing Temporary Help**

The argument is that if we lose a manager unexpectedly we could get temporary help from a similar manager elsewhere in the North Star group. This assumes that a manager exists with the right skill set who also has time to double up. At Rose Villa right now, however, we have no managers who have any extra time. With preventive maintenance falling behind on grounds, HVAC systems, ducts, and exterior paint, it is clear no surplus staff time exists at all. This argument does not make a lot of sense.

### **H. Reduced cost of capital**

Being part of a larger entity might indeed result in a lower cost of capital, but Rose Villa doesn't need any. It has no plan for pursuing a Phase 4 that would require access to significant capital. Rose Villa does benefit from refinancing existing bonds at a lower interest rate, but we can do that as a stand-alone organization. North Star would provide no advantage here at all. Lower cost of capital might benefit North Star expansion plans, of course, but there would be no benefit to Rose Villa whatsoever.

### **I. Avoiding the challenges of operating at a small scale**

Rose Villa already gets buying leverage through its participation in Leading Age group-purchasing programs. There is little more a North Star affiliation would offer. As explained under "Cost Savings" above, economies of scale sound promising to the uninitiated, but in Rose Villa's situation those theoretical savings are usually not significant.

### **J. Altruism**

This is an argument that Mary Muñoz made in her presentation to Rose Villa residents, and one Vassar also made in her presentation to the Resident Council: Rose Villa residents are uniquely blessed in enjoying the advantages of the Special Place that Rose Villa is. Surely such fortunate residents should want to altruistically support investment in a North Star intent on providing that rare opportunity to other seniors elsewhere. This is a fatuous argument for three reasons:

1. Many residents feel that they can and are sharing the benefits of their experience here in ways other than investing in North Star
2. It's impossible to quantify, let alone replicate, the "special Rose Villa experience."
3. Altruism by its very nature cannot be imposed on those who don't chose to express it.

## **K. Safety in numbers**

The hackneyed canard says that one must grow or be in danger. Either you have a growth plan or you are part of someone else's growth plan. But in the North Star scenario all the advantages of growth accrue to North Star, not to Rose Villa.

As the North Star umbrella expands, North Star increases and diversifies its revenue, which is certainly a good thing for North Star. But Rose Villa doesn't grow, it just pays a management fee to North Star. While corporate separation should protect North Star CCRCs from each other's problems, North Star might choose to raise a thriving Rose Villa's fees to subsidize a faltering CCRC elsewhere. Either way North Star's numbers offer little safety.

It's true that growth is advocated by Ziegler, a respected, successful investment bank specializing in the health care, senior living, and education markets. They know the senior living market well, but they are hardly a disinterested party. Ziegler makes its money by funding growth, so it's no surprise that they see growth as being a necessity.

Mary Muñoz of Ziegler said that, although an independent Rose Villa might do well for many years, if something unexpected occurred it could be in trouble. What if the local demographic changed and Rose Villa could no longer maintain a high occupancy rate? Yes, Rose Villa might be in serious trouble in such an event, but Rose Villa would be in trouble with or without North Star as a parent company.

## **8. ARE THERE ALTERNATIVES TO INVESTING IN NORTH STAR?**

There are two very attractive alternative models.

1. If you believe that Rose Villa would benefit from being the subsidiary of a CCRC management company, we could join one of the credible, nonprofit management companies that already exist. There is absolutely no need to reinvent the wheel. Companies like Kendal have an excellent reputation for

managing CCRCs, and affiliating with them would certainly involve far less risk and investment than North Star.

2. Rose Villa can choose to stay independent while pursuing other ways to innovate for a sustainable competitive advantage. A company can innovate and differentiate in many ways. A few examples:
  - Explore new, innovative business models that offer more attractive value to retirees
  - Focus on delivering world-class customer service
  - Develop additional value-added services for Rose Villa residents
  - Become more attractive to boomers by developing new approaches to CCRC governance involving a more substantive partnership between management and residents
  - Restructure the financial model to offer greater lifetime security

## **9. DO RESIDENTS HAVE A SAY IN THE NORTH STAR INVESTMENT?**

Residents have one voting member and two non-voting members on the Rose Villa Board of Directors, but have no other official voice in deciding whether Rose Villa invests in North Star. As discussed in various videos available on Rvillagers.org, corporate law doctrine states that a Board of Directors has a fiduciary responsibility to the organization, but not to the community being served - which in our case is residents of Rose Villa.

However, if residents were sufficiently concerned, there are two other options, though they are options with serious consequences:

- Legal action
- Going public.

**Legal action:** There have been cases where residents have taken a CCRC to court with claims like marketing misrepresentation and diverting resident fees to benefit another CCRC. The residents and the CCRC typically reach out-of-court settlements, so there are few case law precedents. The catch: This approach requires resident fundraising to pay for an attorney. And Rose Villa would increase fees to pay for its legal expenses—because we are the only source of revenue it has. Another factor: Rose Villa resident contracts include a mandatory arbitration agreement. There are, however, case law examples of arbitration clauses being set aside if a violation of state statutes is alleged.

**Going public:** Rose Villa needs resident support to keep the occupancy rate high. The prospect of residents going public with their dissatisfaction with the Rose Villa investment in North Star could cause fear of reduced occupancy



rates, and that and could induce management to take resident voices more seriously.

**Both options come with risks.** Both could reduce occupancy rates which would potentially result in higher fees and potentially economic difficulty for Rose Villa, so both options have serious consequences.