

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAN MACLEOD, INDIVIDUALLY AND	:	CIVIL ACTION NO.
ON BEHALF OF ALL OTHER	:	
SIMILARLY SITUATED,	:	
	:	
Plaintiff,	:	
	:	
v.	:	JURY TRIAL DEMANDED
	:	
JENNER'S POND, INC. d/b/a, a/k/a	:	
JENNER'S POND RETIREMENT	:	
COMMUNITY, SIMPSON SENIOR	:	
SERVICES, SIMPSON SENIOR HOUSING	:	NOTICE OF REMOVAL
AND COMMUNITY SERVICES, LLC,	:	
SIMPSON MEADOWS and	:	
SIMPSON HOUSE, INC.,	:	
	:	
Defendants.	:	

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA:

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendants, Jenner's Pond, Inc. d/b/a, a/k/a Jenner's Pond Retirement Community ("Jenner's Pond"), Simpson Senior Services, Simpson Senior Housing and Community Services, LLC, Simpson Meadows and Simpson House Inc. (collectively the "Simpson Defendants" and together with Jenner's Pond, the "Defendants"), by and through its counsel of record, Latsha Davis & Marshall, P.C., hereby files this Notice of Removal and removes this matter to the United States District Court for the Eastern District of Pennsylvania, the case styled as Jan MacLeod, Individually and on behalf of All Other Similarly Situated, v. Jenner's Pond, Inc. d/b/a a/k/a Jenner's Pond Retirement Community, Simpson Senior Services, Simpson Senior Housing and Community Services, LLC, Simpson Meadows and Simpson House Inc., originally filed as Case No. 001354 (Case ID: 20060135) in the

Court of Common Pleas of Philadelphia County, Pennsylvania (the state court action) and in support and grounds for removal thereof, respectfully avers as follows:

1. Plaintiff Jan MacLeod (“MacLeod” or “Plaintiff”) commenced a civil action against Defendants in the Court of Common Pleas of Philadelphia County, Pennsylvania by filing a Complaint on or about June 23, 2020. (A true and correct copy of MacLeod’s Complaint is attached hereto and marked as Exhibit “A.”).

2. On or about June 25, 2020, Defendant, Jenner’s Pond, was served with a copy of MacLeod’s Complaint. (Ex. A).

3. Venue is properly laid in this District because the action sought to be removed is pending in this District. 28 U.S.C. §1446 (a).

4. This Notice of Removal is timely filed in accordance with 28 U.S.C. §1446(b) because the Notice of Removal is being filed within thirty (30) days after the service on Jenner’s Pond, Inc. Upon information and belief, no Simpson Defendants have been served in the state court action. Moreover, this removal is being filed within thirty (30) days after the Complaint was filed in state court.

5. The basis for removal is the jurisdiction conferred by the Class Action Fairness Act, of 2005, 28 U.S.C. § 1332(d)(2).

6. This action is subject to removal pursuant to 28 U.S.C. §1441.

7. Plaintiff, Jan MacLeod is a citizen of the State of Missouri, residing at Cedarhurst Senior Living, 2333 Chapel Hill Rd., Columbia, Missouri 65203. (Ex. A, ¶ 6).

8. At all times material hereto, Jenner’s Pond, is a Pennsylvania nonprofit corporation with a registered address and principal place of business located at 2000 Greenbriar Lane, West Grove, Chester County, Pennsylvania.

9. At all times material hereto, Defendant, Simpson Senior Services is a Pennsylvania nonprofit corporation with its registered address and principal place of business located at 175 Strafford Ave., Suite 314, Wayne, Delaware County, Pennsylvania.

10. At all times material hereto, Defendant, Simpson Senior Housing and Community Services, LLC is a Pennsylvania limited liability company with its registered address and principal place of business located at 150 Monument Road, Suite 105, Bala Cynwyd, Montgomery County, Pennsylvania.

11. At all times material hereto, Defendant, Simpson Meadows, is a Pennsylvania nonprofit corporation with its registered address and principal place of business located at 175 Strafford Ave., Suite 314, Wayne, Delaware County, Pennsylvania.

12. At all times material hereto, Defendant, Simpson House, Inc., is a Pennsylvania nonprofit corporation with its registered office and principal place of business located at 2101 Belmont Ave., Philadelphia, Philadelphia County, Pennsylvania.

13. By way of factual background, MacLeod alleges that she was a former resident at Jenner's Pond and entered into a Continuing Care Agreement ("Agreement") on February 21, 2007. (Ex. A, ¶ 17).

14. MacLeod's Complaint alleges that the Agreement provided for her to live in a Jenner's Pond facility apartment, specifically unit 1108 and in exchange she was required to pay monthly service fees as well as an "Entrance Payment." (Ex. A, ¶ 18).

15. MacLeod alleges that when residents leave, Defendants must pay the residents or their estate a refund of at least 50% of the resale value of the unit, based upon a formula included in the Agreement. (Ex. A, ¶ 20).

16. MacLeod alleges that the Agreement provides that Defendants may deduct from the refund any necessary maintenance repairs or replacements. (Ex. A, ¶ 21).

17. MacLeod alleges that she moved out of her Jenner's Pond apartment in December 2018 and her unit was resold in March of 2019 for \$360,000. (Ex. A, ¶¶ 27-28).

18. MacLeod alleges that Jenner's Pond deducted a "Market Upgrade" charge in the amount of \$111,247 from her refund which was outside the scope of permitted maintenance, repairs, and replacement, and was not discussed or permitted by the Agreement and thus, in deducting a "Market Upgrade" from Plaintiff's refund, Jenner's Pond violated or breached the Agreement with MacLeod. (Ex. A, ¶ 34).

19. As to the Simpson Defendants, Plaintiff alleges, without providing any more detail, that Simpson Senior Services, Simpson Senior Housing and Community Services, LLC, Simpson Meadows, and Simpson House, Inc. all use "form agreements" and have a "common practice of deducting these 'Market Upgrades'" and thus breached their respective Agreements with their residents. (Ex. A, ¶¶ 2, 33-35).

20. In addition, to the alleged damages for breach of contract to MacLeod as noted above, Plaintiff further claims that all Defendants breached agreements with their residents by deducting "Market Upgrades" and failing to fully reimburse residents consistent with the terms of the agreements. (Ex. A, ¶ 43).

21. According to the Complaint the conduct of the Simpson Defendants constituted a breach of contract and a breach of fiduciary duty to former residents.

22. The Complaint seeks to certify a class of all former residents of Defendants' respective facilities whose refund payments were allegedly reduced by a "Market Upgrade." (Ex. A, ¶36).

23. Defendants expressly deny any liability to MacLeod and the putative class members and further denies that MacLeod and the putative class members are entitled to any of the relief sought in the Complaint. However, by virtue of the damages and other relief pleaded by MacLeod, individually and on behalf of the putative class, the amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

24. The Complaint alleges that MacLeod, individually, was charged a “Market Upgrade” of \$111,247.00. (Ex. A, ¶ 31). According to the Agreement, Jenner’s Pond was required to pay MacLeod fifty percent (50%) of the resale value of her unit, or \$180,000 since her unit sold for \$360,000. (Ex. A, ¶¶ 28, 29).

25. The Complaint further alleges that instead of receiving a check in the amount of \$180,000, MacLeod only received \$124,377.00, a difference of \$55,623.

26. MacLeod also alleges that her claim is “typical” of the claims of the putative class members. (Ex. A, ¶ 37).

27. MacLeod claims that the “exact number of class members is unknown at this time but can be ascertained readily from the sales records of Defendants.” (Ex. A, ¶ 37).

28. MacLeod further claims that each of the three senior care facilities houses anywhere from sixty to one hundred and fifty residents at a time. The number of class members would be each resident whose unit was sold and whose refund was reduced due to a “Market Upgrade” in the years since the Defendants began the practice. (Ex. A, ¶ 37).

29. Based upon the allegations in the Complaint, the number of class members would exceed one hundred members.

30. Under the theory put forward by MacLeod and as averred in her complaint, the alleged damages as would be claimed by the putative class members, in the aggregate, would exceed \$5,000,000.

31. Written notice of this Notice of Removal is being given to Plaintiff's counsel as required by law.

32. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal is being filed with the Prothonotary of the Court of the Common Pleas of Philadelphia County.

33. In removing this action to federal court, Defendants expressly reserve, and do not waive, any and all rights and defenses that they have or may have.

34. In light of the foregoing, this matter should be properly removed from the Philadelphia County Court of Common Pleas and be heard before this Honorable Court.

WHEREFORE, Defendants, Jenner's Pond, Inc., d/b/a a/k/a Jenner's Pond Retirement Community, Simpson Senior Services, Simpson Senior Housing and Community Services, LLC, Simpson Meadows and Simpson House Inc., pray that the above-captioned action now pending in the Court of Common Pleas of Philadelphia County, Pennsylvania, be removed therefrom to this Honorable Court.

Respectfully submitted,

LATSHA DAVIS & MARSHALL, P.C.

Dated: July 15, 2020

/s/ Glenn R. Davis

Kimber L. Latsha, Esquire

Attorney I.D. No. 32934

Glenn R. Davis, Esquire

Attorney I.D. No. 31040

Brian A. McCall, Esquire

Attorney I.D. No. 83030

1700 Bent Creek Boulevard, Suite 140

Mechanicsburg, PA 17050

(717) 620-242

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within captioned Notice of Removal was filed electronically with the Clerk of the Eastern District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case and also served by First Class Mail addressed to:

Robert J. Mongeluzzi, Esquire
David L. Kwass, Esquire
Elizabeth A. Bailey, Esquire
Saltz Mongeluzzi & Bendesky, P.C.
One Liberty Place, 52nd Floor
1650 Market Street
Philadelphia, PA 19103
(Attorney for Plaintiff)

Richard Shevitz, Esquire
Lynn A. Toops, Esquire
Cohen & Malad, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
(Attorney for Plaintiff)

Dated: July 15, 2020

/s/ Glenn R. Davis
Glenn R. Davis, Esquire

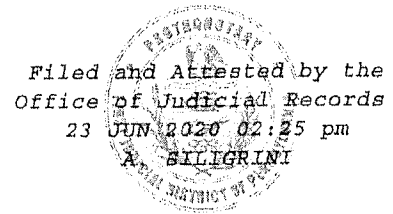
Exhibit A

Court of Common Pleas of Philadelphia County
Trial Division
Civil Cover Sheet

For Prothonotary Use Only (Docket Number)	
JUNE 2020 E-Filing Number: 2006035301 001354	
PLAINTIFF'S NAME JAN MACCLEOD	DEFENDANT'S NAME JENNER'S POND, INC., ALIAS: JENNER'S POND RETIREMENT COMMUNITY
PLAINTIFF'S ADDRESS CEDARHURST SENIOR LIVING 2333 CHAPEL HILL ROAD COLUMBIA MO 65203	DEFENDANT'S ADDRESS 2000 GREENBRIAR LANE WEST GROVE PA 19390
PLAINTIFF'S NAME	DEFENDANT'S NAME SIMPSON SENIOR SERVICES
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS 175 STRAFFORD AVENUE SUITE 314 WAYNE PA 19087-2502
PLAINTIFF'S NAME	DEFENDANT'S NAME SIMPSON SENIOR HOUSING AND COMMUNITY SERVICES, LLC
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS 150 MONUMENT ROAD SUITE 105 BALA CYNWYD PA 19004
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 5 COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input checked="" type="checkbox"/> Other: <u>CLASS ACTION</u>
CASE TYPE AND CODE C1 - CLASS ACTION	
STATUTORY BASIS FOR CAUSE OF ACTION	
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER) <div style="text-align: center;"> FILED PRO PROTHY JUN 23 2020 A. SILIGRINI </div>	
IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>JAN MACCLEOD</u> Papers may be served at the address set forth below.	
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY ROBERT J. MONGELUZZI	ADDRESS ONE LIBERTY PLACE 52ND FLOOR 1650 MARKET ST. PHILADELPHIA PA 19103
PHONE NUMBER (215) 496-8282	FAX NUMBER (215) 496-0999
SUPREME COURT IDENTIFICATION NO. 36283	E-MAIL ADDRESS VSmith@smbb.com
SIGNATURE OF FILING ATTORNEY OR PARTY ROBERT MONGELUZZI	DATE SUBMITTED Tuesday, June 23, 2020, 02:25 pm

COMPLETE LIST OF DEFENDANTS:

1. JENNER'S POND, INC.
ALIAS: JENNER'S POND RETIREMENT COMMUNITY
2000 GREENBRIAR LANE
WEST GROVE PA 19390
2. SIMPSON SENIOR SERVICES
175 STRAFFORD AVENUE SUITE 314
WAYNE PA 19087-2502
3. SIMPSON SENIOR HOUSING AND COMMUNITY SERVICES, LLC
150 MONUMENT ROAD SUITE 105
BALA CYNWYD PA 19004
4. SIMPSON MEADOWS
175 STRAFFORD AVENUE SUITE 314
WAYNE PA 19087-2502
5. SIMPSON HOUSE, INC.
2101 BELMONT AVENUE
PHILADELPHIA PA 19131



SALTZ MONGELUZZI & BENDESKY P.C.
 BY: ROBERT J. MONGELUZZI, ESQ./ DAVID L. KWASS, ESQ./
 ELIZABETH A. BAILEY ESQ.
 IDENTIFICATION NOS. 36283/65856/316689
 52nd FLOOR
 1650 MARKET STREET
 PHILADELPHIA, PA 19103
 (215) 496-8282

COHEN & MALAD, LLP
 BY: LYNN A. TOOPS, ESQ./ RICHARD SHEVITZ, ESQ.
PRO HAC PENDING
 One Indiana Square, Suite 1400
 Indianapolis, IN 46204
 (317) 472-6703

<p>JAN MACLEOD, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED Cedarhurst Senior Living 2333 Chapel Hill Rd Columbia, MO 65203</p> <p><i>Plaintiff</i></p> <p>vs.</p>	<p>COURT OF COMMON PLEAS PHILADELPHIA COUNTY LAW DIVISION</p> <p>NO.</p>
<p>JENNER'S POND, INC. d/b/a, a/k/a JENNER'S POND RETIREMENT COMMUNITY 2000 Greenbriar Lane West Grove, PA 19390</p> <p>And</p>	<p><u>JURY TRIAL DEMANDED</u></p>
<p>SIMPSON SENIOR SERVICES 175 Strafford Avenue, Suite 314 Wayne, PA 19087-2502</p> <p>And</p> <p>SIMPSON SENIOR HOUSING AND COMMUNITY SERVICES, LLC 150 Monument Road, Suite 105 Bala Cynwyd, PA 19004</p>	

And

SIMPSON MEADOWS
175 Strafford Ave Suite 314
Wayne, PA 19087-2502

And

SIMPSON HOUSE, INC.
2101 Belmont Ave
Philadelphia, PA 19131-0

Defendants

"NOTICE

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgement may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL and INFORMATION SERVICE
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-1701"

"AVISO

"Le han demandado en corte. Si usted quiere defenderse contra las demandas nombradas en las páginas siguientes, tiene veinte (20) días, a partir de recibir esta demanda y la notificación para entablar personalmente o por un abogado una comparecencia escrita y también para entablar con la corte en forma escrita sus defensas y objeciones a las demandas contra usted. Sea avisado que si usted no se defiende, el caso puede continuar sin usted y la corte puede incorporar un juicio contra usted sin previo aviso para conseguir el dinero demandado en el pleito o para conseguir cualquier otra demanda o alivio solicitados por el demandante. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE ABOGADO (O NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO), VAYA EN PERSONA O LLAME POR TELEFONO LA OFICINA NOMBRADA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL. ESTA OFICINA PUEDE PROPORCIONARLE LA INFORMACION SOBRE CONTRATAR A UN ABOGADO.

SI USTED NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO, ESTA OFICINA PUEDE PROPORCIONARLE INFORMACION SOBRE AGENCIAS QUE OFRECEN SERVICIOS LEGALES A PERSONAS QUE CUMPLEN LOS REQUISITOS PARA UN HONORARIO REDUCIDO O NINGUN HONORARIO.

ASOCIACION DE LICENCIADOS DE FILADELFIA
SERVICO DE REFERENCIA E INFORMACION LEGAL
One Reading Center
Filadelfia, Pennsylvania 19107
Telefono: (215) 238-1701"

CLASS ACTION COMPLAINT

1. Plaintiff Jan MacLeod (“Plaintiff”) brings this action on behalf of herself and all other similarly situated persons who suffered damages as a result of the conduct of Defendants Jenner’s Pond, Inc, Simpson Senior Services, Simpson Senior Housing and Community Services, LLC, Simpson Meadows, and/or Simpson House, Inc. (collectively “Defendants”).

2. Defendants own and operate senior living communities. Elderly residents enter into a form agreement with Defendants pursuant to which the residents agree to pay hundreds of thousands of dollars in entrance fees to reside in those communities, and the Defendants agree that when residents leave, Defendants will provide a partial refund of the entrance fees upon resale of the residents’ units.

3. In violation of that agreement, however, Defendants also deduct a so-called “Market Upgrade” from the refund payments to the residents even though the form agreement does not provide for the deduction of such “Market Upgrades”.

4. As set forth below, Defendants deducted a “Market Upgrade” in excess of \$100,000 from the Plaintiff’s refund payment.

5. This action brings claims on behalf of former residents of Defendants’ senior living communities to recover damages owed to them based upon Defendants improper deduction of such “Market Upgrades” from the residents’ refund payments.

THE PARTIES

6. Plaintiff, Jan MacLeod, is a citizen of the State of Missouri, presently residing at the above-captioned address.

7. Defendant, Jenner’s Pond, Inc., d/b/a Jenner’s Pond Retirement Community is incorporated under the laws of the Commonwealth of Pennsylvania and is owned and operated by

Defendant Simpson Senior Services, with its registered address in Chester County, Pennsylvania at the above-captioned address.

8. Defendant, Simpson Senior Services is incorporated under the laws of the Commonwealth of Pennsylvania with its registered address in Delaware County, Pennsylvania at the above-captioned address.

9. Defendant Simpson Senior Housing and Community Services, LLC, is a Pennsylvania limited liability company with its registered address in Montgomery County, Pennsylvania at the above-captioned address.

10. Defendant, Simpson Meadows, is incorporated under the laws of the Commonwealth of Pennsylvania and is owned and operated by Defendant Simpson Senior Services, with its registered address in Delaware County, Pennsylvania at the above-captioned address.

11. Defendant, Simpson House, Inc., is incorporated under the laws of the Commonwealth of Pennsylvania and is owned and operated by Defendant Simpson Senior Services, with its registered address in Philadelphia County, Pennsylvania at the above-captioned address.

12. Upon information and belief, Defendants regularly and systematically conduct business within the Commonwealth of Pennsylvania and Philadelphia County.

13. Defendants own and operate senior-living communities, including Jenner's Pond, Simpson Meadows and Simpson House (collectively "Simpson retirement communities").

14. The Jenner's Pond facility is located at 2000 Greenbriar Lane, West Grove, Chester County, Pennsylvania 19390.

15. The Simpson Meadows facility is located at 101 Plaza Drive, Downingtown, Chester County, Pennsylvania, 19335.

16. The Simpson House facility is located at 2101 Belmont Avenue, Philadelphia, Philadelphia County, Pennsylvania, 19004.

FACTUAL ALLEGATIONS

17. On February 21, 2007, Plaintiff, seeking to join the Jenner's Pond facility, entered into a form, written Continuing Care Agreement ("Agreement") with Defendants.

18. The Agreement provided for her to reside in a Jenner's Pond facility apartment, unit 1108, in exchange for monthly service fees, as well as an "Entrance Payment" in the sum of \$290,000. A true and accurate copy of the Agreement is attached hereto as Exhibit A.

19. Upon information and belief, Defendants enter into the Agreement with many or all of the senior living residents at Simpson retirement communities.

20. The Agreement provides that when residents leave, Defendants must pay the residents or their estate a refund of at least 50% of the resale value of the unit, based upon a formula included in the Agreement. Ex. A at Section XIII (B)(2) and (B)(3).

21. The Agreement further provides that Defendants may deduct from the refund any necessary "maintenance, repairs or replacements" to the units. Ex. A at XIII (B)(6)

22. The Agreement did not discuss or permit Defendants to deduct the expenses of any "Market Upgrade" for the units prior to resale.

23. When residents leave, the residents are forced to rely and thus are fully dependent on Defendants to make only the necessary "maintenance, repairs or replacements" in good faith consistent with the Agreement.

24. When residents leave or pass away, residents are forced to rely and thus are fully dependent on Defendants to resell their unit in good faith and maximize any refund.

25. Due to Defendants' exclusive control over any repairs to the units and the resale of units under the Agreement, Defendants were in a position of fiduciary trust with former residents with respect to resale of units.

26. As such, Defendants had a duty of candor and honesty and a duty to act in residents' best interests when reselling the units.

27. In December 2018, Plaintiff moved out of the Jenner's Pond facility.

28. In March 2019, Defendants resold Plaintiff's unit for the amount of \$360,000.

29. Pursuant to Section XIII (B)(3) of the Agreement, Jenner's Pond is required to pay Jan MacLeod \$180,000, representing 50% of the resale value.

30. However, Defendants sent Plaintiff a check in the amount of only \$124,377.00, rather than \$180,000.

31. When questioned about its failure to pay 50% of the resale value as required by the Agreement, Defendants stated "We deducted the market upgrades (\$111,247.00) from the sale price of \$360,000 which gave us the resale value of \$248,753.00. The refund amount is \$124,377.00 which is based on 50% of the resale value." Emails, Ex. B at 2-3. Defendants further stated that this "process for calculating the resale value and refund is the same process we have used for former residents when they vacated their apartment or cottage." Ex. B at 1.

32. By using residents' money to make capital improvements to Defendants' property, which were entirely within Defendants' sole discretion and control, and then reducing residents' refunds based upon the "upgrades" Defendants chose to make, Defendants engaged in self-dealing.

33. Defendants' common practice of deducting these "Market Upgrades" from residents' refunds is embedded into Defendants' bookkeeping, which expressly accounts for the "Market Upgrades" in a Revenue Tracker. Refurb Expense/ Revenue Tracker, Ex. C at 3.

34. The Agreement does not provide for Defendants to deduct "Market Upgrades" from residents' refund payments. Indeed, the term "Market Upgrade" does not appear anywhere in the Agreement and such upgrades are outside the scope of the "maintenance, repairs, and replacements" which the contract permits.

35. As a result of this practice, Defendants inappropriately and routinely imposed their capital improvement costs upon their former residents, in violation of the terms of their form Agreements and in breach of their fiduciary duties.

CLASS ACTION ALLEGATIONS

36. Plaintiff brings this action on behalf of herself and as a class action pursuant to Pennsylvania Rules of Civil Procedure 1701 *et seq.*, on behalf of herself and the following Class:

All former residents of a Simpson retirement community whose refund payments were reduced by a "Market Upgrade".

37. This action is properly maintainable as a class action pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, and 1709.

- a. The Class is numerous enough such that joinder of all Class Members is impracticable. Each of the three senior care facilities houses anywhere from sixty to hundred and fifty residents at a time. The number of class members would be each resident whose unit was sold and whose refund was reduced due to a "Market Upgrade" in the years since the Defendants began the practice. Additionally, in some instances, such persons may have sustained damages in amounts too small to justify the expense and effort required to bring individual lawsuits. These damages, addressed collectively through the class action mechanism, are substantial enough to justify legal action. The exact number of class members is unknown at this time but can be ascertained readily from the sale records of Defendants.

- b. There are questions of law or fact common to the Class members regarding Defendants' practice of deducting "Market Upgrades" from refunds. The predominant common questions of law and fact include, but are not limited to:
 - i. The construction of the Agreements;
 - ii. Information provided to Class members at the time of purchase
 - iii. Information provided to Class members at the time of sale;
 - iv. Whether Defendants' common practice of charging former residents for "Market Upgrades" breached the Agreements;
 - v. Whether Defendants' common practice of charging former residents for "Market Upgrades" breached their fiduciary duties;
 - vi. Whether Plaintiff and the Class have been damaged, and if so, the proper measure of damages; and
 - vii. Any potential defenses that Defendants may assert.
- c. The claims of Plaintiff are typical of, if not identical to the claims of the members of the Class because they are based on the same legal theories and arise from the same or a similar Agreement.
- d. Under Rule 1709, the Plaintiff will fairly and adequately assert and protect the interests of the Class; Plaintiff has retained competent counsel experienced in class actions and complex litigation, there no conflicts of interest with the Plaintiff or the Class, and there are financial resources sufficient to assure that the interests of the Class will not be harmed.

38. A class action provides a fair and efficient method for adjudication of this controversy under the criteria of Rules 1702(5) and 1708. This action may be maintained as a class action under Pa. R.Civ. P. 1708(a):

- a. Common questions of law and fact predominate over any questions affecting individual members, as this litigation concerns the conduct of Defendants.
- b. The Class is so numerous that joinder is impracticable. Still, there are no unusual legal or factual issues which would cause management problems not normally and/or routinely handled in class actions.
- c. The prosecution of separate actions by individuals against Defendants would create a risk of inconsistent or varying adjudications. Defendants could be confronted with

inconsistent standards of conduct if separate actions were allowed to proceed and former residents could face inconsistent damages findings. Moreover, adjudications with respect to individual members of the class, particularly legal adjudications related to contractual interpretation, would as a practical matter be dispositive to the interests of other members not party to the adjudication.

- d. There does not appear to be any litigation already commenced involving these refunds.
- e. This forum is appropriate for the litigation of the all claims of the Class because Defendants regularly conducted and continue to conduct business and engaged and continue to engage in the conduct at the center of this litigation at their Simpson House facility, located in Philadelphia County.
- f. The amount which may be recovered by individual Class members justifies the expense and effort of administering the action.
- g. In deducting "Market Upgrades" from refunds, Defendants have acted on grounds generally applicable to the Class, making final equitable or declaratory relief appropriate.

39. Absent a class action, the Class members will continue to suffer losses and Defendants' misconduct will proceed without remedy. In addition, without a class action, it is likely that many members of the Class will remain unaware of Defendants' conduct and the claims they possess.

COUNT I- BREACH OF CONTRACT

PLAINTIFF V. ALL DEFENDANTS

40. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth below.

41. Plaintiff and all members of the Class entered into the written Agreement with Defendants.

42. At all times relevant hereto, the Agreement was in full force and effect.

43. Defendants breached the Agreement and other promises made to Plaintiff and all members of the Class when, as described in detail above, Defendants deducted “Market Upgrades” from Class members’ refunds and failed to fully reimburse Class members consistent with the terms of the Agreement.

44. Plaintiff and all members of the Class have performed all, or substantially all, of the obligations imposed on them under the contract.

45. Plaintiff and all members of the Class have sustained damages as a result of Defendants’ breach of the contract described above.

WHEREFORE, Plaintiff Jan Macleod, on behalf of herself and the class of similarly situated individuals she seeks to represent, demands the following:

- (A) That this Court certify the class described above;
- (B) That judgement be entered in favor of Plaintiffs and against Defendants for all compensatory losses and damages allowed by law in excess of Fifty Thousand Dollars (\$50,000);
- (C) An award of pre- and post-judgment interest for delay damages be entered in Plaintiffs’ favor;
- (D) That the Court award Plaintiffs attorneys’ fees, costs and expenses of litigation against Defendants; and
- (E) Any other such relief this Court deems just and appropriate.

COUNT II- BREACH OF FIDUCIARY DUTY

PLAINTIFF V. ALL DEFENDANTS

46. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth below.

47. At all times relevant hereto, in the resale of the Plaintiff's and the Class members' units, Defendants owed a fiduciary duty to same.

48. At all times relevant hereto, Plaintiff and the Class members' units were dependent upon Defendants to make necessary repairs consistent with the Agreement.

49. At all times relevant hereto, Plaintiff and the Class members were dependent upon Defendants to sell their respective units.

50. At all times relevant hereto, Defendants had total control and power over the changes made to the unit and the ultimate sale price of the units.

51. By virtue of the power and control Defendants exercised over the repair and resale of Plaintiff and the Class members' units, Defendants' relationship with Plaintiff and Class members was one of justifiable trust on behalf of Plaintiff, imposing fiduciary responsibilities on Defendants.

52. Defendants breached their fiduciary duty to Plaintiff and the Class members by:

- a. Failing to minimize the cost of changes made to residents' units prior to sale;
- b. Improperly using residents' refunds to fund their own capital improvements costs in upgrading the units;
- c. Improperly using residents' refunds to upgrade the units without consent;
- d. Failing to reasonably ensure the maximum refund to residents;
- e. Failing to act in good faith in the resale of residents' unit;

53. As a direct and proximate cause of Defendants' breach of their fiduciary obligations described above, Plaintiff and all members of the Class have sustained damages and are entitled to all remedies available under law.

WHEREFORE, Plaintiff Jan Macleod, on behalf of herself and the class of similarly situated individuals she seeks to represent, demands the following:

- (A) That this Court certify the class described above;
- (B) That judgement be entered in favor of Plaintiffs and against Defendants for all compensatory losses and damages allowed by law in excess of Fifty Thousand Dollars (\$50,000);
- (C) An award of pre- and post-judgment interest for delay damages be entered in Plaintiffs' favor;
- (D) That the Court award Plaintiffs attorneys' fees, costs and expenses of litigation against Defendants; and
- (E) Any other such relief as this Court deems just and appropriate.

Dated: June 23, 2020

Respectfully submitted,

/s/ Robert J. Mongeluzzi

Robert J. Mongeluzzi
David L. Kwass,
Elizabeth A. Bailey
SALTZ MONGELUZZI & BENDESKY
P.C.
One Liberty Place, 52nd Floor
1650 Market Street
Philadelphia, PA 19103
Telephone: (215) 575-3859
ebailey@smbb.com

Richard E. Shevitz*
Lynn A. Toops *

COHEN & MALAD, LLP

One Indiana Square, Suite 1400

Indianapolis, IN 46204

(317) 636-6481

rshevitz@cohenandmalad.com

ltoops@cohenandmalad.com

ehyde@cohenandmalad.com

* *Pro Hac Vice* applications to be submitted

Counsel for Plaintiff and the Class

VERIFICATION

The averments or denials of fact contained in the foregoing document are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This Verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to falsification to authorities.

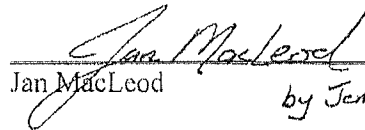

Jan MacLeod by Jenny Brook POA

EXHIBIT A

TRANSMITTAL FORM

DATE: February 12, 2007

	FIRST RESIDENT	SECOND RESIDENT
Name	Jan MacLeod	
Street Address	400 Rockland Rd. West (mail) PO Box 2	
City, State, Zip	Montchanin, DE 19710	
Telephone		
Soc. Sec. Number		
Date of Birth		

Total cost of home \$ 290,000.00

10% deposit required \$ 29,000.00

Amount Received / Date received \$ 29,000.00 Feb. 21, 2007

Type of Deposit / Check # check # 1949

Cottage/Apt. number apartment # 1108

Phase or Building West

Unit Type / Size 2BR w/ den, 2 bath

Desired move in date Sept. 1, 2007 or sooner

Designated monthly fee \$ 2,242

Preferred name/s on badge Jan MacLeod

☉ Securities transfer will be arranged with the Trust Department

**JENNER'S POND RETIREMENT
COMMUNITY**

CONTINUING CARE AGREEMENT

2000 Greenbriar Lane
West Grove, PA 19390
(610) 869-6801

Jenner's Pond Retirement Community

NOTICE OF RIGHT TO RESCIND

Feb. 21, 2007
Date Rescission Period Begins

You may rescind and terminate your resident's agreement, without penalty or forfeiture, within seven (7) days of the above date. You are not required to move into Jenner's Pond before the expiration of this seven (7) day period. No other agreement or statement you sign shall constitute a waiver of your right to rescind your agreement within the seven (7) day period.

To rescind your resident's agreement, mail or deliver a signed and dated copy of this notice, or any other dated written notice, letter or telegram, stating your desire to rescind to Jenner's Pond at 2000 Greenbriar Lane, West Grove, PA 19390, not later than midnight of Feb. 29, 2007.

Pursuant to this notice, I hereby cancel my resident's agreement.

Date _____

Prospective Resident's Signature

TABLE OF CONTENTS

I.	Initial Deposit.....	1
II.	Entrance Payment Procedure.....	2
III.	Monthly Service Fee.....	2
IV.	Statement Regarding Extent of Care.....	3
V.	Entrance Procedure and Requirements.....	4
	A. Application for Residency.....	4
	B. Release of Medical Information.....	4
	C. Guarantee of Acceptance.....	4
	D. Right to Make Final Decision.....	4
	E. Non-Transferable.....	4
VI.	Living Accommodations.....	5
VII.	Community Facilities.....	5
VIII.	Services Provided by Jenner's Pond.....	5
	A. Dining.....	5
	B. Room Service.....	6
	C. Guest Privileges.....	6
	D. Utilities and Services.....	6
IX.	Insurance.....	7
X.	Medical and Nursing Care.....	7
XI.	Change of Accommodation and Transfer Agreements.....	8
	A. To a Similar Home.....	8
	B. To a Larger or Smaller Home.....	8
	C. To the Jenner's Pond Health Facilities.....	8
XII.	Financial Policy.....	9
	A. Community's Policy.....	9
	B. Resident's Responsibility.....	10
	C. Recovery of Community Subsidy.....	10

XIII.	Refund Policy/Termination of the Agreement.....	10
A.	Prior to Occupancy.....	10
B.	After Occupancy.....	10
C.	Death of Resident.....	11
XIV.	Miscellaneous.....	12
A.	Disposition of Property.....	12
B.	Arrangement for Guardianship and Resident's Estate.....	12
C.	Residents' Council.....	12
D.	Rules Adopted by the Community.....	13
E.	Guest Privileges.....	13
F.	Pets.....	13
G.	Marriage of a Resident Subsequent to Occupancy.....	13
H.	Separability.....	14
I.	Notices.....	14
J.	Changes Due to Actions of Regulatory Agencies.....	14
K.	Non-Waiver Provision.....	14
L.	Complete Agreement.....	14
M.	Tax Disclosure Statement.....	15
N.	Annual Disclosure Statement.....	15
O.	No Discrimination.....	15
P.	Delegation by the Chief Executive Officer.....	15
EXHIBIT A.	- Trust Document.....	16

**JENNER'S POND
CONTINUING CARE AGREEMENT**

This Agreement is made this 21st day of February, 2007, and is between Jenner's Pond Retirement Community and Jan MacLeod, hereinafter called "Resident". (The word "Resident" refers to the person, or persons, if more than one, who has signed this Agreement.)

The Resident has applied and been accepted for residence at Jenner's Pond subject to the signing of this Agreement.

I. Initial Deposit

The Resident executing this Agreement has paid Jenner's Pond an Initial Deposit of \$ 29,000.⁰⁰.

The Initial Deposit, plus accrued interest, if applicable, will be credited to the Entrance Payment, described below. The Initial Deposit is refundable under circumstances described in the section title "Refund Policy/Termination of the Agreement".

II. Entrance Payment Procedure

A. Initial Entrance Payment

The resident shall make an Entrance Payment of \$ \$290,000.⁰⁰ for:

Cottage _____ Apartment X

Number 1108 West Residence, West Grove, PA 19390

Description 2 bedrm w/den & 2 baths

Anticipated Date Available Sept. 1, 2007

The Entrance Payment stated above for the Home specified in this Agreement will not increase after this Agreement is signed.

Special Conditions: Resident to receive \$1,000 credit for wait list at settlement.

B. Entrance Payment Deposits

Ten percent (10%) of the Entrance Payment or \$ 29,000.⁰⁰ will be due and payable when the Resident selects the home. Fifty percent (50%) of the options will be due and payable upon selection of options. Ninety percent (90%) of the Entrance Payment or \$ 261,000.⁰⁰ plus final fifty percent (50%) of options will be paid on or before the date of occupancy by Resident, Jan MacLeod.

C. Second Person Entrance Payment

A second person Entrance Payment of \$15,000 will be due on or before the date of occupancy by the second resident.

III. Monthly Service Fee

Resident agrees to pay to Jenner's Pond a Monthly Service Fee in the amount of \$ 2,242.⁰⁰. This monthly service fee is payable in advance.

By the fifth day of each month, Resident, or party designated by the Resident, will receive a monthly statement of account itemizing the Monthly Service Fee and any other chargeable services that the Resident may have used. This statement will show the current balance due from the Resident and is due upon receipt.

The Monthly Service Fee will be charged to Resident when Resident takes occupancy of a Home or thirty (30) days after the Home is available for occupancy, whichever occurs first.

In order to maintain a stable level of operating income for the Community, the Monthly Service Fee may be increased or decreased periodically. Factors to be considered in reviewing Monthly Service Fees include, but are not limited to, operating expense, government regulations, reserve fund maintenance, and occupancy levels.

Jenner's Pond will strive to maintain the Monthly Service Fee at the lowest figure consistent with sound financial operation and a high quality of service. Also, every effort will be made to limit adjustments to the Monthly Service Fee to once a year. Jenner's Pond will provide Resident with sixty (60) days written notice of such adjustments prior to the end of our fiscal year. (Our fiscal year will begin July 1, and you will receive your notice by May 1.) The maximum percentage increase in the Monthly Service Fee shall not be greater than the percentage change in the Consumer Price Index (CPI Factor) plus three (3) percentage points in any one fiscal year. The new maximum Monthly Service Fee will be calculated by multiplying the Old Monthly Service Fee by the sum of .03 plus the CPI Factor, where the CPI Factor is calculated as follows:

$$\text{CPI Factor} = \frac{\text{Consumer price index for August of the current fiscal year}}{\text{Consumer price index for August of the immediately preceding fiscal year}}$$

Example:

The CPI for August 1998 was 168.1 (assumed value)

The CPI for August 1999 was 172.1 (assumed value)

The CPI Factor is therefore 172.1 divided by 168.1, or 1.0238.

The new maximum Monthly Service Fee, [old Monthly Service Fee x (CPI Factor + .03)], in this example is therefore:

Old Monthly Service Fee X (1.0238 + .03)

Old Monthly Service Fee X 1.0538

890 X 1.0538 = \$937.88

and the maximum dollar increase is \$47.88 (or \$937.88 - \$890)

IV. Statement Regarding Extent of Care

Beginning with the date on which the Resident moves in and occupies one of the Homes, Jenner's Pond will furnish the Resident with a Home, together with all of the facilities, services, and medical care specified in this Agreement, for the balance of the Resident's life, or for such short period as shall apply in the event that this Agreement is terminated pursuant to its term.

If, during the construction of the Community, the Resident's Home is completed and occupied by Resident before all facilities and services to be provided to Resident are available on the site of the Community, Jenner's Pond shall take temporary, but adequate, measures to fulfill the terms of this Agreement and its responsibilities hereunder until the buildings providing these services are completed and equipped.

V. Entrance Procedure and Requirements

A. Application for Residency Shall Include:

1. Completed Application
2. Financial Statement
3. Medical Record and Physical Data

Jenner's Pond requires that the Resident submit the results of a current, complete physical examination (x-ray not required) at Resident's expense prior to occupancy. Thereafter, Resident must submit the results of a complete physical examination every two years, at Resident's expense.

B. Release of Medical Information

The Resident hereby authorizes Jenner's Pond to release any medical information relating to the Resident to any doctor, hospital, or other facility or individuals when it is deemed necessary or helpful in providing for the Resident's ongoing care or treatment or for the purpose of submitting claims for benefits payable for health care services. This authorization will remain in effect until the Resident gives written notification to Jenner's Pond of his/her desire to rescind this authorization.

C. Guarantee of Acceptance

In the unlikely event that the Resident, in the time period between the date of acceptance by Jenner's Pond and the date of occupancy, develops a physical problem that would normally disqualify Resident for acceptance, Jenner's Pond hereby agrees that Resident will be accepted and that full benefits will be provided as needed and covered under the terms of the Agreement.

D. Right to Make Final Decision

Jenner's Pond reserves the right to make final decision on acceptance, terms of acceptance, placement or dismissal of any Resident.

E. Non-Transferable

The rights and privileges of the Resident under this Agreement are personal to the Resident and cannot be transferred or assigned by act of the Resident, or by a proceeding of law, or otherwise. If any person, other than the person(s) who has signed the Agreement commences to live in the Resident's Home without following the procedures established by Jenner's Pond, Jenner's Pond shall have the right to terminate this Agreement.

VI. Living Accommodations

Jenner's Pond will furnish wall-to-wall carpeting, full kitchen appliances, washer and dryer, and other permanent fixtures in the Resident's Home. All other furnishings shall be provided by the Resident and shall remain Resident's personal property. No structural changes may be made to a Home without the approval of the Community's Administrative Staff, (hereinafter referred to as "the Staff"). Approval of such modifications may be conditioned upon the Resident's payment to the Community of an amount sufficient to restore the Home to its original condition upon vacating.

VII. Community Facilities

The Resident may use all common areas including dining rooms, lobbies, library, social and recreational facilities (indoor and outdoor), craft rooms, fitness facilities, and other community facilities provided by the Community. In addition, all residents of Jenner's Pond will have membership privileges at the adjacent Southern Chester County YMCA.

VIII. Services Provided by Jenner's Pond**A. Dining**

Residents are required to participate in one of two meal plans as follows:

Dining Option 1 is a flexible meal program. Residents receive a quarterly allotment (flexdollars) for meals. Currently, this is \$124.⁰⁰ per person per month. This program allows residents to choose how they spend their flexdollars. Residents who are away for thirty consecutive days will receive a credit based on the food portion of the program, currently \$124.⁰⁰ per person per month.

Dining Option 2 provides for one meal per day. Residents will receive credit for missed meals after being absent a minimum of seven (7) days. However, residents who are absent because they are in the hospital will receive credit for missed meals immediately. Credit will be issued at the rate of \$6.55 per day.

Residents may change meal plans on a quarterly basis. Additional meals will be billed to the Resident at the end of each quarter.

The monthly amount for the food portion of the programs may be increased or decreased periodically in accordance with the guidelines stated under the Monthly Service Fee in Section IV of this Agreement.

B. Room Service

Jenner's Pond will deliver meals to the Resident's Home if the Resident is receiving bedside care for a minor illness and if this service is ordered by Resident's Physician or Staff Medical Personnel. This free service will be limited to a maximum of fourteen (14) consecutive days. A Resident requiring additional room service must be evaluated by Jenner's Pond Director of Wellness and/or the Resident's Physician to determine the need for additional services.

C. Guest Privileges

Residents are encouraged to have guests in the Community's dining facilities. Guest meals may be used toward the quarterly minimum. Additional meals will be billed to the Resident at the end of each quarter.

D. Utilities and Services

1. *Basic Utilities/Services* - Jenner's Pond will furnish water and sewer to each Home and will be responsible for trash removal, snow removal, and lawn care. Basic cable service is provided to Residents who desire this service. In addition, Jenner's Pond will furnish heat, electricity, and air conditioning to each Apartment Home. Cottage Residents will be responsible for their own energy payments.

2. *Telephone* - It is the Resident's responsibility to have a telephone installed at the Resident's expense. For safety reasons it is requested that this service be in place prior to the first night of occupancy. The staff will need to make contact via this service from time to time. Resident's phone numbers will not be provided to unauthorized persons.

3. *Housekeeping* - Jenner's Pond will be responsible for the housekeeping in all community areas; however, it is the Resident's responsibility to maintain the Home in a clean, sanitary condition and to perform light housekeeping tasks.

Jenner's Pond will provide semi-annual, heavier cleaning services as necessary to maintain the Resident's Home. Jenner's Pond reserves the right to inspect apartments/cottages periodically, and, if the Home appears to be in need of extra cleaning, the Resident will be charged for this service. Regularly scheduled cleaning is available at reasonable rates through Jenner's Pond. Outside cleaning services are not permitted.

4. *Maintenance* - Endeavoring to maintain Jenner's Pond as a first-class Community, Jenner's Pond will be responsible for all necessary repairs, maintenance, and replacement of property and equipment owned by Jenner's Pond. The Resident will of course be responsible for his/her own property. Only approved contractors or maintenance staff will be allowed to make physical changes inside the cottage or apartment.

5. *Linens Service* - Weekly linen service, including making up the bed, is available to Jenner's Pond residents at no additional charge. Laundry service will be provided for bed linens supplied by Jenner's Pond. Residents will be responsible for laundering their own linens. Each Home will have a stacked washer and dryer for the resident's personal use.

6. *Emergency Call* - In addition to 911 emergency service, Jenner's Pond has trained nursing personnel on staff twenty-four (24) hours a day to respond to emergency inquiries from Residents. Each Resident will have an emergency call system in their home.

7. *Transportation* - Jenner's Pond will provide scheduled transportation, at no additional charge to Residents, for nearby shopping, services, and medical appointments. Additionally, transportation to the dining facilities will be available for the main meal each day.

8. *Social Events and Activities* - Jenner's Pond will assist the Residents' Council in planning and scheduling social, educational and recreational activities. Trips and tours will be available to Resident at the lowest cost that Jenner's Pond can negotiate with the tour providers.

IX. Insurance

In order to ensure proper protection for the Resident and the Community, the Resident is required to maintain the following types of insurance coverage, if applicable.

1. Auto Insurance – coverage is required by the Commonwealth of Pennsylvania
2. Homeowner's Insurance – Tenant Coverage
3. Medical and Surgical Insurance
4. Liability Insurance Coverage

Jenner's Pond will carry casualty and liability insurance on the Community buildings. It will be the Resident's responsibility to cover the contents of his/her Home under his/her homeowner's insurance with tenant coverage, including adequate liability coverage.

Resident shall carry Medicare Part A and Part B coverage or an insurance policy equivalent in benefits. Resident shall also carry adequate long-term care insurance or its equivalent in benefits as approved by Jenner's Pond prior to admission. Resident shall provide a copy of the long-term care insurance policy to Jenner's Pond. If resident fails to maintain coverage, Jenner's Pond reserves the right to terminate this Agreement.

X. Medical and Nursing Care

Jenner's Pond will offer skilled nursing, intermediate nursing, and personal care. Home health and hospice care will also be available through outside agencies. Independent living residents of Jenner's Pond will have priority for admission to the assisted living/skilled nursing units. However, all costs will be borne by the Resident.

The Resident agrees that he/she will cooperate with Jenner's Pond Staff in securing reimbursement should governmental programs or Resident's insurance cover any portion of the nursing and/or personal care services provided by Jenner's Pond. Jenner's Pond is not designed to care for persons who have psychosis, contagious, or dangerous diseases. On the rare occasion where these may occur, the Staff of Jenner's Pond, in consultation with the Resident's physician, spouse, and family will determine whether the continued presence of the Resident at Jenner's Pond is either dangerous or detrimental to the health or peace of the Resident or other residents. This determination shall be a good faith determination, in writing, and signed by Jenner's Pond Medical Director and Administrator. Jenner's Pond shall have the authority to transfer the Resident to an appropriate facility for care and shall not be obligated for such care. The Resident, upon transfer, shall be entitled to a refund of the Entrance Payment as outlined in the section entitled "Refund Policy/Termination of Agreement," Section XIII.

XI. Change of Accommodation and Transfer Agreements

A. To A Similar Home

The resident has the option to move from his/her cottage or apartment to a similar home, if available. The Resident's request for change must be submitted in writing to Jenner's Pond Staff well in advance to allow for proper arrangements.

A standard renovation charge to cover any necessary renovations will be made prior to the change. The Resident will be responsible for the arrangements and expenses of the move.

B. To A Larger or Smaller Home

If the resident wants to move to a larger or smaller home, the amount of the additional charge or refund will be calculated by comparing the then current Entrance Payments multiplied by the unamortized percentage for the two homes with the difference due to or payable by the Resident.

A standard renovation charge will be assessed as in paragraph XI. (A) above and the Resident will be responsible for the arrangements and expenses of the move.

C. To the Jenner's Pond Health Care Facilities

1. *Who makes the decision?* Residents will be encouraged to remain in their Home as long as they choose provided that they have made arrangements for appropriate care and are not a danger to themselves or others.

Jenner's Pond in consultation with the Resident's physician, spouse and immediate family will determine the need for temporary or permanent care in the health care facilities. The final decision as to the level of care and need for transfer will rest with an Advisory Committee composed of representatives of Jenner's Pond's administrative staff, Resident's Council president, medical directors, and residents.

2. *Temporary Versus Permanent Transfers.* Temporary transfers will be stays of ninety (90) days or less; stays of more than ninety (90) days will be considered permanent transfers; stays of more than ninety (90) days in an off-campus health care facility or other institutional setting will be considered permanent transfers also, unless waived by the Jenner's Pond Committee of the Board of Directors upon the recommendation of the Advisory Committee.

Monthly service fees for the cottages and apartments will continue to be due during temporary transfers to the health care facility. An adjustment may be made for meals not taken after seven (7) days.

If only one Resident remains in the Home (assuming this Agreement has been signed by more than one Resident), there will be no change in the monthly fee for the Home except that any second-person adjustment will be discontinued.

Upon permanent transfer of the last resident of a cottage or apartment to the Ruston Residence or Preston Residence, or to an off-campus facility as described in this section, monthly service fees will cease to be due, and Jenner's Pond will have right to resell the Home.

Upon permanent transfer of the last resident of a cottage or apartment to the Ruston Residence or Preston Residence, the cottage or apartment will be resold. The resident or designee will be required to sign a document (see Exhibit A) to establish a trust account with the proceeds of all refunds due from the resale of the cottage or apartment. The trust account will be for the exclusive care of the resident or residents so long as resident(s) resides in Jenner's Pond facilities.

In the event that a Resident again becomes able to live independently following a permanent transfer, Jenner's Pond will offer the Resident the first available Home of the type last occupied by the Resident.

XII. Financial Policy

A. Community's Policy

Without in any way qualifying Jenner's Pond right to terminate this Agreement, the Community's policy is that if the sole reason for non-payment of the financial obligation of the Resident to Jenner's Pond is insufficient funds, beyond the control of the Resident, and barring any material misrepresentation or omissions on the Financial and Medical Application forms, the matter will be reviewed by Jenner's Pond with the Resident. If the Resident presents to Jenner's Pond facts which, in the Community's opinion, justify special financial consideration, Jenner's Pond may partly or wholly subsidize the Resident's Monthly Fee provided that such subsidy can be granted or continued without impairing the ability of Jenner's Pond to attain its objectives while operating on a sound financial basis. All determinations made by Jenner's Pond concerning the granting or continuing of special financial consideration shall be final and binding on the Resident, and any such determination shall be regarded as a

confidential transaction between Jenner's Pond and the Resident, except for reports required to be made to financial institutions lending monies to Jenner's Pond or to regulatory or other governmental bodies.

B. Resident's Responsibility

It shall be a condition of receiving a subsidy that the Resident shall represent that he or she has not made any gift or other transfer of money or personal property in contemplation of the execution of this Agreement, or subsequently, which would impair his or her ability or the ability of his or her estate to satisfy the financial obligations under this Agreement. If the Resident's income is found to be inadequate to meet his or her responsibilities to Jenner's Pond and to pay personal and incidental expenses, the Resident will make every effort to obtain assistance from available resources and, if the Resident can qualify, to take the necessary steps to obtain county, state or federal aid or assistance. No Resident whose Monthly Service Fee is subsidized wholly or partly by Jenner's Pond may sell or otherwise transfer property without written consent of Jenner's Pond. A Resident whose Monthly Service Fee is subsidized wholly or partly by Jenner's Pond shall, from time to time at the request of Jenner's Pond, supply the Community with financial statements and copies of tax returns.

C. Recovery of Community Subsidy

When a resident whose Monthly Service Fee has been subsidized wholly or partly by Jenner's Pond leaves the Community or dies, all such subsidies and any unpaid fees shall be deducted from the refundable portion of the Resident's Entrance Payment. This subparagraph shall apply whether or not the Resident is in residence at Jenner's Pond at the time of death.

XIII. Refund Policy/Termination of the Agreement

A. Prior to Occupancy

1. The Resident may elect to terminate this Agreement within seven (7) days of the date on which it was signed or the Initial Deposit was made; whichever is later, in which case the full Initial Deposit shall be returned to the Resident.

2. If the Resident is prevented by illness, injury, incapacity, or death from occupying his/her Home, all Deposits made toward the Entrance Payment shall be refunded less those costs incurred at the specific written request of the Resident, within sixty (60) days of Jenner's Pond receiving written notification.

3. If the Resident elects to terminate the Agreement before occupancy for reasons other than those stated above, the Resident will forfeit \$5,000.00 of the Initial Deposit. The balance of the Resident's deposit will be refunded only upon resale of the Home.

B. After Occupancy

1. *90-Day Grace Period.* If this agreement is terminated for any reason during

the first ninety (90) days of occupancy, the Resident will forfeit the Initial Deposit plus any costs incurred at the specific written request of the Resident. The remainder of the Entrance Payment will be refunded when the Home is vacated or sold and resold.

2. *4th through 44th Month of Residence.* Beginning in the fourth (4th) whole month of residence, the Entrance Payment (less the Initial Deposit which was earned previously) will be earned by Jenner's Pond at the rate of one percent (1%) per month for a period of forty (40) months. If this Agreement is terminated for any reason during this time, a refund equal to the resale value of the Home multiplied by the unearned percentage will be paid to the Resident when the Home is vacated and resold.

3. *Guaranteed Minimum 50% Refund of Resale Value.* If this Agreement is terminated for any reason, including death, after the forty-fourth (44th) month of residence, Jenner's Pond will refund a minimum of 50% of the resale value of the Home to the Resident or to the Resident's estate when the Home is vacated and resold.

In all cases, refunds will be made only after the Home has been vacated by the Resident and Jenner's Pond has received payment for the resale price of the Home. Any unpaid fees or expenses will be deducted from the refund.

4. *Termination by Jenner's Pond.* Jenner's Pond reserves the right to terminate this Agreement for just cause, including the following:

- a. Material misrepresentations or omissions on the Financial or Medical Application forms;
- b. Actions by the Resident which create a serious threat to the life, health, safety, and peace of the Resident or other residents; and,
- c. Breach of or default on any of the terms of this Agreement.

In order to terminate this Agreement for cause, Jenner's Pond will serve Resident with written notice thirty (30) days in advance. The Resident will then have thirty (30) days to vacate the Home and remove all possessions. The refund formulas and policy stated in paragraph XIII.B above will apply.

5. *Termination by Resident.* The Resident may terminate this Agreement by giving Jenner's Pond thirty (30) days' advance written notice of cancellation.

6. *Condition of Home.* The Resident shall leave the Home in the same condition and repair as existed upon his/her initial occupancy, normal wear and use excepted. Should any maintenance, repairs or replacements be necessary, the cost shall be the responsibility of the Resident, and may be deducted from any refund.

C. Death of Resident

This Agreement shall automatically terminate upon the death of the Resident, unless the Resident is survived by a spouse who is also a Resident and, therefore, a party to this Agreement.

XIV. Miscellaneous

A. Disposition of Property

1. The personal property, household furnishings, and belongings of Resident shall be removed by the Resident or the Resident's representative within thirty (30) days after vacating the Home.

2. After thirty (30) days, any remaining property shall become the sole possession of Jenner's Pond and will be removed and handled as decided by the Administrator. Jenner's Pond reserves the right to deduct any expenses associated with the removal and disposition of such property from any refund due the Resident.

B. Arrangement for Guardianship and Resident's Estate

The Resident agrees to make arrangements for the handling of the Resident's affairs in case of incapacity and to notify Jenner's Pond of the arrangements prior to occupancy. The Resident agrees to revise these arrangements as necessary to keep them current and to notify the Community of any changes as they occur.

The Resident also agrees to provide Jenner's Pond with the following information ninety (90) days after occupancy:

1. The name and address of the funeral director with whom the Resident has made arrangements.
2. The location of the Resident's Will.
3. The name and address of the Resident's lawyer and executor.
4. The names and addresses of any banks, trust officers, etc.
5. Information necessary to complete a death certificate.
6. Whom to notify in case of death, including the person to whom personal property is to be released.

If in the event the resident becomes unable to care properly for his or her property, and if the Resident has made no other designation of a person or legal entity to serve as guardian, or trustee, or under power of attorney, then the Resident hereby authorizes Jenner's Pond to nominate a person or entity to serve as legal guardian when approved by a court as provided by law.

C. Residents' Council

Residents of Jenner's Pond have the right and the responsibility to form a Residents' Council and to elect a board of directors and officers of that Council. The head of the Council shall be a member of the Jenner's Pond Board of Directors.

Management of Jenner's Pond will meet at least quarterly with the Residents for the purpose of free discussion of policies, programs, services, and other issues of importance to the Residents.

D. Rules Adopted by the Community

Jenner's Pond reserves the right to adopt policies and procedures regarding residency not inconsistent with the provisions of this Agreement, and the Resident agrees to abide by such policies and procedures. These policies will govern such things as smoke-free areas, pets, guest registration, and similar items providing health, safety and welfare of the Resident. It is the intent of Jenner's Pond to involve the Residents' Council in the development of these policies and procedures, whenever feasible.

E. Guest Privileges

Residents have the right to have guests visit their Homes. Such visits shall be limited to ten (10) consecutive days unless the Chief Executive Officer grants special permission. Visiting children must be carefully supervised out of consideration for other residents in the Community.

F. Pets

The Resident may maintain two dogs, cats or other pet upon approval of and on terms prescribed by the management of Jenner's Pond. No such approval shall be necessary for fish or small birds that are kept in appropriate containers. The Resident will be responsible for ensuring proper care of any pet and that the pet does not create any disturbance or otherwise constitute a nuisance. The Resident also hereby agrees to comply with any pet regulations adopted by Jenner's Pond in conjunction with the Residents' Council.

Prior to moving in, the Resident must submit to Jenner's Pond a written copy of the provisions the Resident has made for caring for the pet in the event that illness, incapacity, or death prevent the Resident from continuing to do so.

Jenner's Pond reserves the right to establish pet-free areas within the Community. These will be established in advance of initial occupancy and may include one or more of the apartment buildings, the Alison Community Center, the health care facility, and one or more of the cottage neighborhoods.

G. Marriage of a Resident Subsequent to Occupancy

1. *Marriage to a Non-Resident.* If a resident marries a non-resident and they wish to share the Resident's Home, the non-Resident spouse must comply with the admission policy as set forth in this Agreement. The married couple will then pay the prevailing double occupancy Monthly Service Fee for the Home in which they live and the standard second person Entrance Payment.

If the non-Resident cannot comply with the admission policy as set forth in this Agreement, the Resident may terminate this Agreement and the provisions of the "Refund Policy/Termination of the Agreement" section of this Agreement will apply.

2. *Marriage to Another Resident.* If two Residents marry and one wishes to give up his/her Home, the refund policy stated in the "Refund Policy/Termination of the Agreement" section of this Agreement will apply.

H. Separability

If any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed and enforced as if such provision had not been included.

I. Notices

Any notice, demand, or request that may be or is required to be given under this Agreement shall be delivered in person or sent U.S. Certified or Registered Mail, postage prepaid, and shall be addressed to:

1. If to Jenner's Pond: 2000 Greenbriar Lane, West Grove, PA 19390
2. If to the Resident: P.O. Box 2, Montclaire, DE 19710

Either party may designate such other address as shall be given by written notice. Upon occupancy of the Home the address of the Resident will be the address of the Home until Resident gives another address in writing.

J. Changes Due to Actions of Regulatory Agencies

Notwithstanding any other provision of this Agreement, Jenner's Pond shall have the right to alter the living accommodations of the Resident to meet the requirements of law, the regulations of regulatory agencies, or other duly constituted authorities or agencies.

K. Non-Waiver Provision

The statutory provisions of the Pennsylvania Continuing Care Provider Registration and Disclosure Act "82" cannot be waived by the Resident or by Jenner's Pond.

L. Complete Agreement

This Agreement sets forth all of the promises, agreements, conditions, and understandings between the parties hereto and supersedes all prior agreements between the parties. No oral alteration, amendment, change or addition shall be binding unless reduced to writing and signed by the parties.

M. Tax Disclosure Statement

Tax code changes enacted by Congress in June of 1984, "Public Law 98-369", may affect your taxable income. The IRS interprets Paragraph 172 of the law, pertaining to below market interest rate loans, as imposing an income tax liability on the refundable portion of your Entrance Payment subject to certain exclusions. Specifically, the IRS may impute interest to any refundable portion of this payment, which exceeds a certain dollar amount adjusted annually by the IRS, even though you did not receive interest payments. You should consult your accountant or attorney to determine how Paragraph 172 may apply to you.

N. Annual Disclosure Statement

As required by the Pennsylvania Continuing Care Provider Registration and Disclosure Act "82", an annual disclosure statement will be provided to each Resident annually.

O. No Discrimination

Jenner's Pond is a residential community designed to provide a secure and supportive lifestyle to people who have attained the age of sixty (60) regardless of race, creed, color, sex, or national origin.

P. Delegation by the Chief Executive Officer of Jenner's Pond

Any authority or responsibility given by this Agreement to the Community's Chief Executive Officer may be delegated by him or her to any one or more members of the Community staff.

x Jan MacLeod
Resident Signature

Feb. 21, 07
Date

Resident Signature

Date

By Rayllis Dunn
Jenner's Pond Representative

Feb. 21, 07
Date

WITNESS:

Friend or Relative of Resident(s)

Jenner's Pond Witness

EXHIBIT B

From: [Jenny Brook](#)
To: [Elizabeth Hyde](#)
Subject: FW: refund check - apt. 1108
Date: Thursday, December 12, 2019 2:19:54 PM

From: Diane Singley <dsingley@jennerspond.org>
Sent: Friday, September 13, 2019 2:13 PM
To: Jenny Brook <jenny.brook@fourwindsinteractive.com>; Barbara Croyle <bcroyle@jennerspond.org>; Marty J. Holbrook <mjholbrook@jennerspond.org>
Subject: RE: refund check - apt. 1108

Hi Jenny,

I wanted to confirm that yes, the process for calculating the resale value and refund is the same process we have used for former residents when they vacated their apartment or cottage.

Marty will address the expenses, invoices and contractors.

I will submit the information and check request to corporate to process the refund.

Have a nice weekend.

From: Jenny Brook <jenny.brook@fourwindsinteractive.com>
Sent: Friday, September 13, 2019 12:47 PM
To: Diane Singley <dsingley@jennerspond.org>; Barbara Croyle <bcroyle@jennerspond.org>; Marty J. Holbrook <mjholbrook@jennerspond.org>
Subject: refund check - apt. 1108

Diane, Barbara and Marty – Based on your email yesterday, a copy of which is below and the spreadsheet sent (also attached here), I am writing to confirm a few points. Understandably, some of this turns on our call on Monday as well.

My understanding is that all of the expenses listed for 2018 and 2019 were exclusively for Apartment Unit 1108. It is also my understanding by the reference to specific invoice numbers that this work was performed by outside contractors and that you have maintained copies of the actual invoices and documentation that reflects the specific services and purchases made. Finally, I want to confirm that the process you have described in calculating Resale Value and a refund for Jan MacLeod is the same process you have used with other residents of Jenner's Pond when they vacate a unit.

Please confirm via return email that the above statements are accurate. If so, please go ahead and follow your normal business practices in processing the check that Jenner's Pond deems appropriate. I do want to be clear that we continue to have concerns about the manner in which the Resale Value and refund were calculated, but based on the last few months and Monday's

conversation, it seems that you are firm in your position and that there is no benefit in continuing to question that approach here. Thanks, Jenny

From: Diane Singley <dsingley@jennerspond.org>
Sent: Friday, September 13, 2019 9:11 AM
To: Jenny Brook <jenny.brook@fourwindsinteractive.com>
Cc: Barbara Croyle <bcroyle@jennerspond.org>; Marty J. Holbrook <mjholbrook@jennerspond.org>
Subject: RE: refund check - apt. 1108

Jenny,

Yes, it was previously submitted and I asked corporate to hold off processing the check until we talked to you regarding the market upgrades.

So now I will advise corporate to go ahead and process.

From: Jenny Brook <jenny.brook@fourwindsinteractive.com>
Sent: Thursday, September 12, 2019 5:32 PM
To: Diane Singley <dsingley@jennerspond.org>
Cc: Barbara Croyle <bcroyle@jennerspond.org>; Marty J. Holbrook <mjholbrook@jennerspond.org>
Subject: RE: refund check - apt. 1108

Diane - I thought from our prior email exchange that this was already submitted to Corporate for approval? Did I misunderstand your email?

We will review the spreadsheet just sent and follow up with you tomorrow. I suspect we will have a few questions. Thanks, Jenny

From: Diane Singley <dsingley@jennerspond.org>
Sent: Thursday, September 12, 2019 1:52 PM
To: Jenny Brook <jenny.brook@fourwindsinteractive.com>
Cc: Barbara Croyle <bcroyle@jennerspond.org>; Marty J. Holbrook <mjholbrook@jennerspond.org>
Subject: RE: refund check - apt. 1108

Hi Jenny,

After our conversation on Monday, Barbara, Marty and I conducted a thorough review of the calculations for the market upgrades. We found a few invoices associated with the apartment that were not included in my original quote.

The market upgrades totaled \$111,247.00 (please see attached excel sheet). Please note, the column on the excel sheet totaling \$18,924.35 under General Capital was Jenner's Pond's

responsibility.

We deducted the market upgrades (\$111,247.00) from the sale price of \$360,000 which gave us the resale value of \$248,753.00. The refund amount is \$124,377.00 which is based on 50% of the resale value.

I will process the refund and forward the check request to our corporate office for review and approval.

If you have any further questions, please let us know.

Thank you!

From: Jenny Brook <jenny.brook@fourwindsinteractive.com>

Sent: Thursday, September 12, 2019 1:16 PM

To: Diane Singley <dsingley@jennerspond.org>

Cc: Barbara Croyle <bcroyle@jennerspond.org>

Subject: RE: refund check - apt. 1108

Good morning Barbara, Diane and Marty – I am writing to follow up on our conversation on Monday afternoon in which we discussed the manner in which Jenner's Pond calculated the Resale Value for purposes of issuing a refund check to Jan MacLeod. During that conversation, you confirmed that Unit Number 1108 was sold in March for a sale price of \$360,000 and that You received the entrance payment in mid July. You also confirmed that an amount of \$107,976.00 was paid by Jenner's Pond to contractors to repair and/or upgrade the Unit, and that you deducted the full amount of these services (\$107,976) from the sale price to derive a calculated Resale Value of \$252,024. You then offered 50% of that calculated Resale Value to derive a refund to Jan MacLeod of \$126,012. If I have misstated the process or the actual calculation as discussed during our call, please let me know.

During our call you agreed to provide the backup documentation that sets out the details for the contractors retained by Jenner's Pond and the services provided on Unit 1108 totaling the \$107,976 that was deducted from the resale price to derive the Resale Value. It is also my understanding from Marty that additional work was performed by Jenner's Pond through it contractors on the Unit that is not included in the \$107, 976. You also agreed to provide documentation for any of these additional service provided that were not deducted from the resale price. As you know, I have been requesting this documentation and the details on how the calculation is performed multiple times since early August. It has been promised repeatedly, but to date I have not been provided with anything. Based on the numbers provided during our call on Monday afternoon, clearly the calculation has been performed and the underlying documents used to perform that calculation are available to you. Why have they not been provided? Please let me know where we are in that process so that we can move forward with the amount due. Thanks very much, Jenny

From: Diane Singley <dsingley@jennerspond.org>

Sent: Monday, September 9, 2019 9:37 AM
To: Jenny Brook <jenny.brook@fourwindsinteractive.com>
Cc: Barbara Croyle <bcroyle@jennerspond.org>
Subject: RE: refund check - apt. 1108

Hi Jenny,

Yes, today at 4:00 works for us.

Please call Barbara's direct line at 610-869-6802.

Thank you.

From: Jenny Brook <jenny.brook@fourwindsinteractive.com>
Sent: Friday, September 6, 2019 4:10 PM
To: Diane Singley <dsingley@jennerspond.org>
Cc: Barbara Croyle <bcroyle@jennerspond.org>
Subject: RE: refund check - apt. 1108

Diane – Following up on our phone call this afternoon. As discussed, I remain extremely concerned about the time it is taking to provide an accounting as to the total amount due and the basis for that calculation, in light of the fact that the apartment was sold in mid March and the new resident moved into the apartment in July.

I ask once again to have the accounting be sent to me supporting the calculation for the amount due. I understand from our call this afternoon that you and Barbara are available to discuss the specific accounting on Monday afternoon. Please let me know if 4 pm eastern time works, and I am happy to send a call in number or simply call your office line, whatever works best. Thanks very much, Jenny

Jenny Brook

General Counsel & EVP

o: 720-264-3051 c: 303-895-5569
w: fourwindsinteractive.com
a: 1221 North Broadway, Denver, CO 80203

This e-mail and any files transmitted with it are confidential. If you have received this e-mail in error, please notify the sender immediately by e-mail. Do not print, copy, retransmit, or otherwise use this information.

From: Diane Singley <dsingley@jennerspond.org>
Sent: Thursday, August 29, 2019 1:40 PM
To: Jenny Brook <jenny.brook@fourwindsinteractive.com>
Subject: RE: refund check - apt. 1108

Thank you for getting back to me with the information.

I want to have everything in place in order to submit the request. Once I have the confirmed calculations, I can most definitely send you the information electronically the same time I send it to our corporate office for processing.

I will be out of the office until Tuesday, September 3rd.

From: Jenny Brook <jenny.brook@fourwindsinteractive.com>

Sent: Thursday, August 29, 2019 3:20 PM

To: Diane Singley <dsingley@jennerspond.org>

Subject: RE: refund check - apt. 1108

Hi Diane -- Please make the check payable to Jan MacLeod c/of Jenny Brook 6241 Chimney Rock Trail, Morrison, CO 80465.

If the check is being issued now, I assume you have a full accounting as to how the check was calculated. As expressed in a separate email exchange, if you could send that accounting to me electronically it would be helpful in determining next steps.

Thanks very much, Jenny

From: Diane Singley <dsingley@jennerspond.org>

Sent: Thursday, August 29, 2019 10:02 AM

To: Jenny Brook <jenny.brook@fourwindsinteractive.com>

Subject: refund check - apt. 1108

Hi Jenny,

To whom should the check be made payable to?

Diane Singley
Director of Residential and Home Care Services
2000 Greenbriar Lane
West Grove, PA 19390
Phone: 610-869-6821
Fax #: 610-869-6720
Email: dsingley@jennerspond.org

EXHIBIT C

Jenner's Pond, Inc.
Refurb Expense/Revenue Tracker

Location: 1108 Resident: MACLEOD Year: 2018 New Resident: MA

Amount Allocated For Marketing Upgrades (if any):

Item Description	Inv. Amt. (Cost)	Inv. # or Date	Charge To Capital / Amount					
			155-50- 53321	Ent Pay Standard Refurb	Ent Pay Standard Refurb Market Upgrade	Ent Pay Market Upgrade	43790 Refurb	General Capital
Refurb/Options Items								
Expenses - 2018								
Appliances								
Cabinetry								
Closet Upgrades								
Counter / Vanity Tops								
Duct Cleaning								
Electric/Lighting								
Flooring								
General Contracting (Carpentry, Plumbing, Etc.)	\$1,713.50	12 20 18				\$1,713.50		
Landscape								
Paint								
Window Coverings								
Pwr Wash - Cottage								
Pwr Wash/Stain - Deck								
Other:								
Bath Access. & Toilets								
EVS / Cleaning								
Locks								
Maintenance								
Thermostats								
TOTAL 2018 EXPENSE	\$1,713.50		\$0.00	\$0.00	\$0.00	\$1,713.50	\$0.00	\$0.00

Case ID: 200601354

Item Description	Inv. Amt. (Cost)	Inv. # or Date	Charge To Capital / Amount				
			155-50- 53321	Ent Pay Standard Refurb	Ent Pay Standard Refurb Market Upgrade	Ent Pay Market Upgrade	43790 Refurb General Capital
<i>Expenses - 2019</i>							
Appliances	\$5,986.38	12 873053				\$5,986.38	
Cabinetry	\$5,870.50	307466				\$5,870.50	
	\$216.00	309858				\$216.00	
Closet Upgrades	\$2,218.00	8361				\$2,218.00	
Counter / Vanity Tops	\$3,053.15	6644				\$3,053.15	
Duct Cleaning							
Electric/Lighting	\$491.20	3086				\$491.20	
	\$958.88	133179				\$958.88	
	\$3,079.35	3197				\$3,079.35	
Flooring	\$8,734.00	06 17 19		\$2,968.00		\$5,766.00	
General Contracting	\$8,855.00	01 08 19				\$8,855.00	
(Carpentry, Plumbing, Etc.)	\$15,938.11	Job 11 / Inv 1				\$13,166.61	\$2,771.50
	\$1,970.00	30105					\$1,970.00
	\$3,446.55	Job 17 / Inv 1				\$3,446.55	
	\$3,150.00	Job 35 / Inv 1					\$3,150.00
	\$452.73	3287					\$452.73
	\$1,612.50	2607791				\$1,612.50	
	\$603.16	1541455					\$603.16
	\$1,044.75	2697791				\$1,044.75	
	\$1,500.00	94				\$1,500.00	
	\$1,500.00	93				\$1,500.00	
	\$670.07	4198				\$670.07	
	\$454.06	4283					\$454.06
	\$6,508.02	Job 63 / Inv 1				\$6,508.02	
	\$2,681.12	2779848				\$2,681.12	
	\$18,404.80	Job 13 / Inv 1				\$13,278.30	\$5,126.50
	\$3,734.50	Job 73 / Inv 1				\$3,734.50	
	\$6,766.44	Job 91 / Inv 1				\$4,981.44	\$1,785.00
	\$804.00	Job 63 / Inv 1				\$804.00	
	\$181.12	96549852				\$181.12	
	\$111.40	9784					\$111.40
	\$42.67	96942044	\$42.67				
Landscape							
Paint	\$10,750.00	5468				\$10,750.00	
	\$495.00	5477				\$495.00	
	\$5,925.00	5485				\$5,925.00	
Window Coverings	\$760.00	8638				\$760.00	

Item Description	Inv. Amt. (Cost)	Inv. # or Date	Charge To Capital / Amount				
			Ent Pay 155-50- 53321 Standard Refurb	Ent Pay Standard Refurb Market Upgrade	Ent Pay Market Upgrade	43790 Refurb	General Capital
Pwr Wash - Cottage							
Pwr Wash/Stain - Deck							
Other:							
Bath Access. & Toilets							
EVS / Cleaning							
Locks							
Maintenance	\$2,500.00	04 02 19					\$2,500.00
Thermostats							
TOTAL 2019 EXPENSE	\$131,468.46		\$42.67	\$2,968.00	\$0.00	\$109,533.44	\$18,924.35
AL RENOVATION EXPE	\$133,181.96		\$42.67	\$2,968.00	\$0.00	\$111,246.94	\$18,924.35

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JAN MACLEOD, INDIVIDUALLY AND ON BEHALF OF ALL OTHER
SIMILARLY SITUATED

(b) County of Residence of First Listed Plaintiff Boone
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert J. Mongeluzzi, Esq./David L. Kwass/Esq.
Saltz Mongeluzzi & Bendesky, P.C.
52nd Fl. 1650 Market Street, Phila, PA 19103 (215) 496-8282

DEFENDANTS

JENNER'S POND, INC. d/b/a, a/k/a JENNER'S POND
RETIREMENT COMMUNITY, ET. AL.

County of Residence of First Listed Defendant Chester
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Glenn R. Davis, Esq./Kimber L. Latsha, Esq./Brian M. McCall, Esq.
Latsha, Davis & Marshall
1700 Bent Creek Blvd., Ste. 140, Mech. PA 17050 (717) 620-2424

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question
(U.S. Government Not a Party)
☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332 and 1446(d)
Brief description of cause:
Notice of Removal

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
07/15/2020

SIGNATURE OF ATTORNEY OF RECORD
Glenn R. Davis

Glenn R. Davis

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: Cedarhurst Senior Living, 2333 Chapel Hill Road, Columbia, MO 65203

Address of Defendant: 2000 Greenbriar Lane, West Grove, PA 19390

Place of Accident, Incident or Transaction: 200 Greenbriar Lane, West Grove, PA 19390

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|-----------------------------|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☐ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____ Must sign here _____
Attorney-at-Law / Pro Se Plaintiff *Attorney I.D. # (if applicable)*

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☐ 11. All other Federal Question Cases
- (Please specify):* _____

B. Diversity Jurisdiction Cases:

- ☒ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury *(Please specify):* _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability – Asbestos
- ☐ 9. All other Diversity Cases
- (Please specify):* _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Glenn R. Davis, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 07/15/2020 Glenn R. Davis 31040
Attorney-at-Law / Pro Se Plaintiff *Attorney I.D. # (if applicable)*

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

JAN MACLEOD, INDIVIDUALLY AND ON
BEHALF OF ALL OTHER SIMILARLY
SITUATED, v.

JENNER'S POND, INC. d/b/a, a/k/a
JENNER'S POND RETIREMENT COMM., ET. AL.

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

<u>7/15/2020</u>	<u>Glenn R. Davis</u>	<u>Defendants</u>
Date	Attorney-at-law	Attorney for
<u>717-620-2424</u>	<u>717-620-2444</u>	<u>gdavis@ldylaw.com</u>
Telephone	FAX Number	E-Mail Address

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Simpson Senior Services Shifts Cost of Retirement Unit Upgrades to Former Residents](#)
