

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>EILEEN C. NIELSEN, Plaintiff, v. THE RESERVE, A NONPROFIT CORPORATION d/b/a THE RESERVE ON WALNUT CREEK, Defendants.</p>	<p>CASE NO. _____ PLAINTIFF’S PETITION FOR DECLARATORY JUDGMENT and APPLICATION FOR TEMPORARY INJUNCTION and REQUEST FOR HEARING</p>
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COMES NOW, Plaintiff Eileen C. Nielsen, and brings her Petition for Declaratory Judgment and Application for Temporary Injunction.

JURISDICTIONAL AND FACTUAL ALLEGATIONS

1. Plaintiff Eileen C. Nielsen is a resident of Polk County, Iowa.
2. Defendant The Reserve, a Non-Profit Corporation d/b/a The Reserve on Walnut Creek (“The Reserve”) is an entity organized under the laws of the state of Iowa with its principal place of business in Polk County, Iowa.
3. The Reserve is a residential apartment facility designed for seniors and senior living. (Ex. 1, Application Agreement).
4. In November 2003, Plaintiff entered into a contract with The Reserve, titled as an “Application Agreement.” (Ex. 1, Application Agreement).
5. Pursuant to the Application Agreement, Plaintiff agreed to pay an initial “Entrance Fee” of \$87,671.00, agreed to pay an initial “Supplemental Amount” of \$87,671.00,

and agreed to pay an ongoing monthly fee, referred to as the “Monthly Charge.” (Ex. 1, Application Agreement).

6. The initial Monthly Charge was set at \$1,574.00, and is subject to fluctuation. (Ex. 1, Application Agreement).

7. The Monthly Charge is based on a formula accounting for Plaintiff’s share of certain of The Reserve’s operating expenses. (Ex. 2, Covenants of Occupancy).

8. In exchange for Plaintiff’s execution of the Application Agreement, her payment of the Entrance Fee, her payment of the Supplemental Amount, and her agreement to the Monthly Charge, The Reserve granted Plaintiff a “Residential Membership” in The Reserve and agreed to provide Plaintiff with living quarters in Apartment 231 at The Reserve (the “Apartment”). (Ex. 1, Application Agreement).

9. Pursuant to the Application Agreement, Plaintiff has the right to occupy the Apartment until her “Residential Membership is transferred or forfeited as detailed in the Covenants or until a licensed health professional selected by [The Reserve] determines that [Plaintiff] is unable to continue living independently within [Plaintiff’s] Apartment, considering resources available in the community of Urbandale, Iowa, to support [Plaintiff’s] needs.” (Ex. 1, Application Agreement).

10. The Application Agreement refers to and purports to incorporate the terms of separate Covenants of Occupancy (“Covenants”). (Ex. 2, Covenants of Occupancy).

11. Pursuant to the Covenants, Plaintiff has the right to occupy the Apartment until her “Residential Membership is transferred or forfeited as detailed in these Covenants of Occupancy, or until a licensed health professional selected by [The Reserve] determines that [Plaintiff] is unable to continue living independently within [Plaintiff’s] Apartment, considering

resources available in the community of Urbandale, Iowa, to support [Plaintiff's] needs.” (Ex. 2, Covenants of Occupancy).

12. Pursuant to the Application Agreement and the Covenants, when and if Plaintiff elects to voluntarily transfer her Residential Membership, she would be entitled to receive an amount not to exceed the Entrance Fee, the Supplemental Amount, and a “Factor” amount, which is an amount periodically approved by The Reserve’s Board of Directors. (Ex. 1, Application Agreement; Ex. 2, Covenants of Occupancy).

13. As of May 2019, the Factor amount applicable to Plaintiff’s Apartment was purportedly \$4,198.00. (Ex. 3, Notice of Special Meeting).

14. Pursuant to the Application Agreement, if Plaintiff elects to transfer her Residential Membership, her ability to, and the extent to which she would, recover the Entrance Fee, Supplemental Amount, and Factor amount would depend on her ability to transfer her Residential Membership to another individual. (Ex. 1, Application Agreement).

15. Plaintiff has not elected to voluntarily transfer her Residential Membership, and her Residential Membership is not subject to forfeiture pursuant to the Application Agreement or the Covenants. (Affidavit of William Nielsen).

16. Plaintiff has not been determined to be unable to continue living independently in the Apartment. (Affidavit of William Nielsen)

17. Plaintiff has paid the applicable Monthly Charge, has otherwise complied with her obligations pursuant to the Application Agreement, and is not in default with respect to the Application Agreement. (Affidavit of William Nielsen).

18. In 2019, the Board of Directors of The Reserve announced its intention to enter into an agreement with S.X. Corporation d/b/a Essex Corporation (“Essex”), pursuant to which The Reserve would sell its assets to Essex. (Ex. 3, Notice of Special Meeting).

19. To date, The Reserve’s Board of Directors has refused to provide Residential Members, including Plaintiff, with substantive information regarding the sale. (Affidavit of William Nielsen).

20. The Reserve’s Board of Director’s refusal to provide Residential Members with information regarding sale has included, but is not limited to, its refusal to provide information regarding:

- a. The proposed sale price;
- b. The value of the assets to be sold;
- c. Any due diligence done by or on behalf of The Reserve regarding potential sales or alternatives to a sale; and,
- d. Other potential purchasers The Reserve has sought, been contacted by, or has discussed a potential sale with.

(Affidavit of William Nielsen).

21. Nonetheless, Plaintiff has ascertained that, pursuant to the terms of the sale:

- a. The Reserve would sell its assets to Essex;
- b. Essex would convert all living quarters to units with a monthly lease charge;
- c. Essex would impose upon Residential Members, including Plaintiff, a choice of either: 1) moving out and leaving the home they have known for many years; or, 2) signing a lease agreement with monthly lease rates calculated on a per-square-foot basis, which would be converted to a month-to-month arrangement after one year.
- d. Whether and the extent to which Residential Members, including Plaintiff, might recover their Entrance Fee, Supplemental Amount, and Factor amount, would depend upon how many residents agreed to enter into lease agreements following the sale.

- e. Whether and the extent to which Residential Members, including Plaintiff, might recover their Entrance Fee, Supplemental Amount, and Factor amount would purportedly be based on the following scale:
 - i. If every one of the 121 apartment units were leased, Residential Members, including Plaintiff, would receive 100% of their Entrance Fee, Supplemental Amount, and Factor amount.
 - ii. If fewer than 60 of the 121 apartment units were leased, Residential Members, including Plaintiff, would receive no portion of their Entrance Fee, Supplemental Amount, and Factor amount.
 - iii. If between 60 and 121 of the apartment units were leased, Residential Members, including Plaintiff, would receive some portion of their Entrance Fee, Supplemental Amount, and Factor amount, not to exceed 55%.
- f. Following the sale, The Reserve would distribute all of the sale proceeds and any existing funds to lenders, other obligees and potentially to Residential Members (if sufficient apartments are leased and if there is, therefore, money to be paid in some percentage to Residential Members).
- g. Following the sale and following The Reserve's distribution of funds, The Reserve will be dissolved and cease to exist as an entity.

(Ex. 3, Notice of Special Meeting; Affidavit of William Nielsen).

22. The Reserve has admitted it is not conceivable that all of the 121 apartment units will be leased; therefore, Residential Members, including Plaintiff, will not receive the full amount of their Entrance Fee, Supplemental Amount, and Factor amount following the sale.

(Affidavit of William Nielsen).

23. According to information The Reserve has provided to Plaintiff, it is very likely that fewer than 60 of the 121 apartment units will be leased; therefore, Plaintiff will not receive any payment for her Entrance Fee, Supplemental Amount, and Factor amount. (Affidavit of William Nielsen).

24. The proposed post-sale, per-square-foot formula Essex intends to impose upon Residential Members would be greater than Plaintiff's current Monthly Charge. (Affidavit of William Nielsen).

25. According to information The Reserve has provided to Plaintiff, the proposed sale would take place on December 31, 2019. (Affidavit of William Nielsen).

26. The amount in controversy exceeds the minimum jurisdictional amount for this Court.

27. Venue is appropriate in Polk County, Iowa.

COUNT I
PETITION FOR DECLARATORY JUDGMENT
(BREACH OF CONTRACT)

28. Plaintiff restates here all previous paragraphs as if fully set forth.

29. Pursuant to the Application Agreement and Covenants, Plaintiff can only lose her Residential Membership and her right to live in the Apartment by voluntary transfer or by forfeiture.

30. Pursuant to the Application Agreement and Covenants, if Plaintiff wanted to explore a voluntary transfer, she would be entitled to seek a transferee from whom she could recoup her Entrance Fee, Supplemental Amount, and Factor amount and, in the meantime, continue to live in the Apartment pursuant to the current arrangement.

31. Plaintiff has not agreed to a voluntary transfer, and is not subject to forfeiture.

32. The sale and the forcing of Plaintiff to either leave the Apartment, or enter into a new monthly lease agreement (in either case, receiving less than the full amount of, or likely no amount of, her Entrance Fee, Supplemental Amount, and Factor amount) would constitute a breach of the Application Agreement.

33. The sale and the forcing of Plaintiff to lose the other rights, amenities, privileges, and protections of the Application Agreement and associated documents would constitute a breach of the Application Agreement.

34. The Reserve's breach of contract would cause Plaintiff damages in various ways, including but not limited to;

- a. Plaintiff would lose her Residential Membership with very little, or likely no, payment of the Entrance Fee, Supplemental Amount, or Factor amount; and,
- b. Plaintiff would face the choice of losing her home, or being forced into a lease — a lease that would be for a monthly amount greater than what she must pay now, that would become a month-to-month arrangement, and that would not be accompanied by the rights, amenities, privileges, or protections of the Application Agreement and associated documents.

35. Pursuant to Iowa Rules of Civil Procedure 1.1101, 1.1102, and 1.1103, Plaintiff hereby seeks an Order from the Court declaring that the proposed sale, as planned, would constitute a breach of the terms of the Application Agreement.

WHEREFORE, Plaintiff respectfully requests the Court enter an Order declaring that the proposed sale of The Reserve's assets to Essex, as planned, would be a breach of the terms of the Application Agreement between Plaintiff and The Reserve.

COUNT II
PETITION FOR DECLARATORY JUDGMENT
(BREACH OF FIDUCIARY DUTY)

36. Plaintiff restates here all previous paragraphs as if fully set forth.

37. The Reserve and its Board of Directors owe fiduciary duties to Plaintiff.

38. The Reserve is knowingly, purposely, and intentionally entering into an agreement with Essex, pursuant to which:

- a. The Reserve would sell all of its assets to Essex;
- b. Plaintiff would be robbed of her contractual rights pursuant to the Application Agreement;
- c. Essex would fundamentally and adversely change the Residential Members' current living arrangement into units with a monthly lease charge;
- d. Plaintiff would be forced to either leave the Apartment, or enter into a new monthly lease agreement (in either case, receiving less than the full amount of, or likely no amount of, her Entrance Fee, Supplemental Amount, and Factor amount);
- e. The Reserve would distribute all of the sale proceeds and any existing funds to lenders and potentially to Residential Members (if sufficient apartments are leased and if there is, therefore, money to be paid in some percentage to Residential Members);
- f. The Reserve would, by design and as planned, have no funds against which Plaintiff might recover;
- g. The Reserve would be dissolved and cease to exist as an entity;
- h. There would be no entity against which Plaintiff would have a right of recovery; and,
- i. Plaintiff would have no means of recovering compensation for her damages.

39. The Reserve's act of knowingly, purposefully, and intentionally entering into such an agreement with such injurious affects would constitute a breach of The Reserve's fiduciary duties to Plaintiff.

40. The Reserve continues to refuse to provide Residential Members, including Plaintiff, with information regarding the sale, including information regarding:

- a. The proposed sale price;
- b. The value of the assets to be sold;
- c. Any due diligence done by or on behalf of The Reserve regarding potential sales or alternatives to a sale; and,

- d. Other potential purchasers The Reserve has sought, been contacted by, or has discussed a potential sale with.

41. The Reserve's refusal to provide such vital information to Plaintiff is a breach of The Reserve's fiduciary duties to Plaintiff.

42. The Reserve's breaches of fiduciary duty would cause Plaintiff damage in various ways, including but not limited to:

- a. Plaintiff would lose her Residential Membership with very little, or likely no, payment of the Entrance Fee, Supplemental Amount, or Factor amount; and,
- b. Plaintiff would face the choice of losing her home, or being forced into a lease — a lease that would be for a monthly amount greater than what she must pay now, that would become a month-to-month arrangement, and that would not be accompanied by the rights, amenities, privileges, or protections of the Application Agreement and associated documents.

43. Pursuant to Iowa Rule of Civil Procedure 1.1101, Plaintiff hereby seeks an Order from the Court declaring that the proposed sale, as planned, would constitute a breach of fiduciary duty.

WHEREFORE, Plaintiff respectfully requests the Court enter an Order declaring that the proposed sale of The Reserve's assets to Essex, as planned, would be a breach of fiduciary duty on the part of Defendant.

COUNT III
APPLICATION FOR TEMPORARY INJUNCTION

44. Plaintiff restates here all previous paragraphs as if fully set forth.

45. Pursuant to Iowa Rules of Civil Procedure 1.1106, 1.1501, and 1.1502, Plaintiff seeks an immediate, temporary injunction against The Reserve, ordering as follows:

- a. That, pending final resolution of this matter, The Reserve is prohibited from selling its assets.

46. A temporary injunction is appropriate when the request for temporary injunction, supported by affidavit, “shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the Plaintiff.” I.R.C.P. 1.1502(1).

47. When determining whether to issue a temporary injunction pursuant to Rule 1.1502(1), the Court is to consider: a) the likelihood of the plaintiff’s success on the merits of the case; b) the threat of irreparable harm in the absence of a temporary injunction; and, c) “the ‘circumstances confronting the parties’” and a balancing of “the harm that a temporary injunction may prevent against the harm that may result from its issuance.” *Max 100 L.C. v. Iowa Realty Co., Inc.*, 621 N.W.2d 178, 181 (Iowa 2001) (quoting *Kleman v. Charles City Police Dept.*, 373 N.W.2d 90, 96 (Iowa 1985)).

48. Plaintiff can demonstrate a high likelihood of success on the merits in this case because, as described herein, the forcing of Plaintiff to abandon her dwelling and revenue rights as a Residential Member pursuant to the Application Agreement would be a breach of the Application Agreement and a breach of fiduciary duty.

49. In the absence of a temporary injunction, Plaintiff will be irreparably harmed.

50. Following The Reserve’s sale of its assets to Essex:

- a. The Reserve would distribute all of its funds to lenders and perhaps others — entities and individuals against whom Plaintiff would have no right of recovery;
- b. The Reserve would, by design and as planned, have no funds against which Plaintiff might recover; and,
- c. The Reserve would cease to exist as an entity.

51. Therefore, after The Reserve sells its assets, Plaintiff will have no means of recovering compensation for her damages.

52. Additionally, postponing The Reserve's sale of assets to Essex pending resolution of this matter will protect other Residential Members from suffering irreparable harm.

53. Conversely, postponing The Reserve's sale of assets to Essex pending resolution of this matter will not cause harm to The Reserve.

54. Attached hereto are relevant documents and Plaintiff's affidavit in support of Plaintiff's Application for Temporary Injunction.

55. The undersigned counsel certifies pursuant to Iowa Rule of Civil Procedure 1.1504 that no part of this Application for Temporary Injunction has been presented to this or any other court

WHEREFORE, Plaintiff respectfully requests this Court enter an immediate, temporary injunction, and Order as follows:

- a. That, pending final resolution of this matter, The Reserve is prohibited from selling its assets; and,
- b. For any other relief in favor of Plaintiff deemed just and equitable.

REQUEST FOR HEARING

Plaintiff requests the Court set her Application for Temporary Injunction for an evidentiary hearing on a date approximately 30 days following this filing, as the Court's docket allows, at which the parties can present evidence regarding the Application.

/s/ Patrick B. White
Patrick B. White
White Law Office, P.C.
3116 Ingersoll Ave.
Des Moines, IA 50312
Telephone: (515) 528-2348
Fax: (515) 271-8100
E-mail: pwhite@whitelawiowa.com
ATTORNEY FOR THE PLAINTIFF

THE RESERVE ON WALNUT CREEK
APPLICATION AGREEMENT
(Prior to Construction of the Phase II Development)

Apartment No. 231
Date: 11/12/03

1. APPLICATION AMOUNT.

I/We Bert V & Eileen C. Nielsen, a resident of the State of Iowa ("Applicant"), in consideration of the payment of the Entrance Fee set forth below, hereby apply for Residential Membership in The Reserve, A Nonprofit Corporation, an Iowa Nonprofit Corporation ("Corporation"), which is intending to construct a retirement center ("Development"). Approval of such Application for membership shall be acknowledged by Corporation executing and delivering a signed copy of this Agreement to Applicant.

Unless otherwise agreed to in writing by Corporation, I/We hereby agree to:

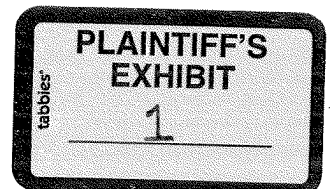
- (1) Pay an Entrance Fee of \$ 87,671-
- (2) Pay a Supplemental Amount of \$ 87,671- (discretionary)

upon signing this Agreement, which sum shall be deposited in an interest bearing escrow account in a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation. The purpose of the escrow account is to protect the Applicant. The Corporation shall maintain one escrow account into which all sums paid by Applicants shall be deposited, the funds deposited in such escrow account shall be kept and maintained in an account separate and apart from the Corporation's business accounts, and shall be held in such escrow account and disbursed pursuant to paragraph 4 of this Agreement.

I/We hereby ratify the provisions contained in the Corporation's Articles of Incorporation and Bylaws, copies of which are attached hereto as Schedules I and II, receipt of which is hereby acknowledged.

2. PRIORITY OF MORTGAGE LIEN.

This Agreement and all rights hereunder are and at all times shall be subject to and subordinate to the lien of the mortgage and accompanying documents to be executed by the Corporation to a lender or lenders ("Lender"); and to any and all modifications, extensions, and renewals thereof; and to any mortgage or deed of trust made in place thereof; and to any mortgage or deed of trust which may at any time thereafter be placed on the property of the Corporation or any part thereof.



3. OCCUPANCY/MONTHLY CHARGES.

The Applicant, if approved for membership as defined in Section 1, will be entitled to occupancy of the above numbered Apartment under the terms and provisions of the "Covenants of Occupancy" (referred to herein as "Covenants") attached hereto as Exhibit A, which Covenants shall constitute the agreement under which the Applicant shall occupy the Apartment. The Applicant shall be referred to as "Resident" throughout the Covenants. In accordance with the terms and provisions of Article 2 of the Covenants the Applicant shall pay his/her proportionate share of the sum required by the Corporation to meet its annual expenses (referred to herein as "Monthly Charge") of the Development. The initial Monthly Charge for said Apartment will not exceed the amount of \$ N/A if an Entrance Fee only is paid, or \$ 1574 - if an Entrance Fee and Supplemental Amount are paid. The monthly charge may be more than this amount or less than this amount, and is subject to fluctuations as provided for in the Covenants. The Applicant shall occupy the above numbered Apartment until such Applicant's Residential Membership is transferred or forfeited as detailed in the Covenants or until a licensed health professional selected by the Corporation determines that such Applicant is unable to continue living independently within such Applicant's Apartment, considering resources available in the community of Urbandale, Iowa, to support the Applicant's needs. The Monthly Charge and all other expenses due and payable by the Resident shall continue until transfer or forfeiture of the Applicant's Residential Membership as detailed in the Covenants. I/We agree to comply with all the terms of the Covenants during the term of my/our occupancy within the Apartment.

4. CANCELLATION PROVISIONS AND DISBURSEMENT OF ESCROW FUNDS.

(a) By Corporation. The Corporation reserves the right at any time before it has notified the Applicant of his/her acceptability for Residential Membership, for reasons deemed sufficient by the Corporation, to return the Entrance Fee and any Supplemental Amount paid by the Applicant under this Agreement; or in the event the Applicant shall have died prior to becoming a Residential Member or being notified in writing that such Applicant has been accepted, the Corporation reserves the right to return same to Applicant's estate or legal representative, and thereupon all rights of the Applicant shall cease and terminate without further liability on the part of the Corporation. In either of the cases mentioned in this Subparagraph 4(a), the Entrance Fee and any Supplemental Amount paid by the Applicant shall be returned with interest, if any, earned thereon.

Further, the entrance fee paid by the Applicant, held in escrow, shall be released only as follows:

(1) If the Corporation fails to meet escrow requirements of Iowa Code Section 523D.5, within thirty-six (36) months, the escrow funds shall be returned by the escrow agent to the Applicants who have made payments to the Corporation;

(2) Upon notice from the Corporation that an Applicant is entitled to a refund, the escrow agent shall refund the amount directly to the Applicant. The amount of the refund shall be included in the Corporation's Notice to the escrow agent and such refund shall be determined in compliance with Iowa Code Chapter 523, and any applicable terms of the Applicant's contract;

(3) Except as provided by paragraphs (1) and (2), amounts held in escrow shall be released only upon approval of the Commissioner of Insurance or the Deputy appointed under Iowa Code Section 523D.5 (hereinafter "Commissioner"). The Commissioner shall approve the release of funds only upon a determination that the Corporation has acquired or will acquire contemporaneously with the funding of the financing for the Development, marketable title to the property which is to be the site of the residence which is the subject of this agreement, the lender has funded the financing for the Development and at least one of the following conditions has been satisfied:

(i) the facility has a minimum of 50% of the units reserved for which the Corporation is charging an entrance fee and the aggregate amount of the entrance fees received by or pledged to the Corporation, plus anticipated proceeds from any long-term financing commitments, plus funds from all other sources in the actual possession of the Corporation, equal not less than 90% of the aggregate cost of constructing or purchasing, equipping, and furnishing the Development.

(ii) the resident has moved into the living unit, the cancellation period required by Iowa Code Section 523D.6, Sub-Section 2, has expired, construction of the Development or the portion of the Development under construction is complete, the Development has been adequately equipped and furnished, a Certificate of Occupancy or the equivalent has been issued by the appropriate local jurisdiction, and the Corporation has been issued all the appropriate licenses or permits needed to operate the Development and provide all of the promised services.

(4) Upon receipt by the escrow agent of a request by the Corporation for the release of these escrow funds, the escrow agent shall approve release of the funds within five (5) working days unless the escrow agent finds that the requirements of Iowa Code Section 523D.5(4) and (5)

have not been met and notifies the Corporation of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the escrow agent requires.

If the Applicant shall default in any of the obligations called for in this Agreement, which obligations are to be performed by Applicant prior to residency in the above-numbered Apartment, and such default shall continue for fifteen (15) days after notice sent by registered mail by the Corporation to the Applicant at the address given below then, at the option of the Corporation, the Applicant shall lose any and all rights under this Agreement, and any amount paid toward the Entrance Fee and Supplemental Amount may be retained by the Corporation as liquidated damages (actual damages not being susceptible of ascertainment at this time) or may, at the option of the Corporation, be returned less the Applicant's proportionate share of the expenses to be determined solely by the Corporation. The Corporation may, at its option, release the obligations of the Applicant under this Agreement in the event the Applicant shall secure an assignment of this Agreement to an assignee who has assumed the obligations herein contained and is satisfactory to the Corporation and Lender. This Agreement is not otherwise assignable.

(b) **By Applicant.** The Applicant may withdraw from this Agreement, thereby terminating all rights and liabilities hereunder, upon which event all amounts paid by him/her hereunder together with interest earned, if any, thereon shall forthwith be refunded, as follows:

(1) If, within one (1) year after the date of execution of this Agreement, construction of the Development in which the Apartment is located has not commenced, the Applicant shall have the right at any time thereafter to withdraw from this Agreement by delivering written notice of withdrawal to the Corporation.

(2) If, before occupancy of the first tenant at the Development, it is determined that an Entrance Fee will be greater than that stated, a Supplemental Amount will be greater than that stated, or the Monthly Charges will be materially greater than that stated, the Applicant shall have the right to withdraw from this Agreement within fourteen (14) days after written notice by the Corporation of such occurrence (which notice the Corporation hereby agrees to serve in a timely manner), provided the Applicant delivers written notice of withdrawal to the Corporation within such fourteen (14) day period. If the Applicant elects not to so withdraw, the Applicant shall pay such amounts as are called for in the Covenants.

(c) **Use of Entrance Fee and Supplemental Amount.** In the event that this Agreement is not cancelled by either the Corporation or the Applicant, and there is a closing on the construction loan with the Lender and acquisition of marketable title to the real estate upon which the Development will be constructed, the

Corporation shall disburse and apply the Entrance Fee and the Supplemental Amount to the uses and purposes of the Corporation. All Interest earned on such funds prior to the date of such closing shall be paid to the Applicant and no further interest shall accrue thereon or be due or payable to Applicant.

Applicant acknowledges that:

i. Upon disbursement of such Entrance Fee and such Supplemental Amount to the uses and purposes of the Corporation, the Corporation will have no further obligation to refund or return such Entrance Fee or such Supplemental Amount to Resident.

ii. Applicant's ability to recover such Entrance Fee and such Supplemental Amount will depend entirely on the Applicant's ability to assign or transfer his Membership in the Corporation to another person or persons.

iii. Applicant acknowledges that his/her Monthly Charge is subject to fluctuation.

iv. Upon the transfer of Applicant's Membership in the Corporation to another person or persons there is no guarantee the Applicant will recover the entire Entrance Fee, the entire Supplemental Amount, or such other funds as may have accrued during Applicant's residency within the Development pursuant to Article 7 of the Covenants of Occupancy.

v. Should Applicant default under the terms of the Covenants of Occupancy, which default is not cured in a manner deemed satisfactory by the Corporation, Applicant's Residential Membership shall be terminated and all of Applicant's right and interest in and to such Entrance Fee, such Supplemental Amount, and such other funds as may have accrued during Applicant's residency within the Development pursuant to Article 7 of the Covenants of Occupancy shall be forfeited by Applicant and become the sole and separate property of the Corporation, and the Corporation shall have the right and authority to transfer Applicant's Apartment to an assignee or transferee. Upon such transfer the Corporation, in its sole discretion, shall have the right to deduct all Monthly Charges and other expenses due and payable by Resident from the sum received upon transfer.

5. NOTICES.

Any notice provided for in this Agreement shall be in writing and shall be deemed to have been sufficient if and when delivered personally or when deposited in the United States Mail, certified return receipt requested, postage prepaid, addressed as follows:

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

EILEEN C. NIELSEN,

Plaintiff,

v.

THE RESERVE, A NONPROFIT CORPORATION d/b/a THE RESERVE ON WALNUT CREEK,

Defendant.

)
) Case No. LACL146325
)
)
) **DEFENDANT’S NOTICE OF SERVING**
) **INITIAL DISCLOSURES**
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COMES NOW Defendant The Reserve, a Nonprofit Corporation d/b/a The Reserve on Walnut Creek, by and through its undersigned counsel, and hereby gives notice pursuant to Iowa Court Rule 16.401(2) that it served the following by U.S. Mail on March 3, 2020:

- 1. Defendant’s Initial Disclosures.

Date: March 5, 2020

/s/ William J. Miller
William J. Miller (AT0005414)
Kirk Schuler (AT0008844)
DORSEY & WHITNEY LLP
801 Grand Avenue, Suite 4100
Des Moines, IA 50309
Tel: (515) 283-1000
Fax: (515) 283-1060
E-mail: miller.william@dorsey.com
schuler.kirk@dorsey.com
ATTORNEYS FOR DEFENDANT

Original filed.

CERTIFICATE OF SERVICE

Copy to:

The undersigned certifies that on March 5, 2020 the foregoing instrument was served upon all parties to the above case and/or to each of the attorneys of record herein at their respective addresses disclosed on the pleadings:

Patrick B. White
White Law Office, P.C.
3116 Ingersoll Ave.
Des Moines, IA 50312
ATTORNEYS FOR PLAINTIFF

By: Electronic Filing and/or
_____ U.S. Mail _____ FAX
_____ Hand Delivered _____ Overnight Courier
_____ E-mail _____ Other _____

/s/ William J. Miller