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7 Proposed Counsel for Debtor and Debtor in Possession
8 Continental Country Club, Inc., an Arizona Non-profit
9 corporation

10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:

13 CONTINENTAL COUNTRY CLUB,
14 INC., an Arizona Non-profit corporation,
15 EIN 86-0414438

16 Debtor.

Chapter 11 Proceeding

Case No. 3:21-bk-00956-EPB

17 **MOTION OF THE DEBTOR FOR ENTRY OF**
18 **AN ORDER LIMITING SERVICE OF CERTAIN**
19 **PLEADINGS IN THE DEBTOR'S CHAPTER 11 CASE**

20 CONTINENTAL COUNTRY CLUB, INC., an Arizona nonprofit corporation (the
21 "Association"), by and through its proposed counsel, Engelman Berger, P.C., hereby submits
22 this motion (the "Motion") for entry of an order, substantially in the form attached hereto as
23 Exhibit A (the "Proposed Order"), pursuant to section 105 of title 11 of the United States
24 Code (the "Bankruptcy Code"), and Rules 2002 and 9007 of the Federal Rules of Bankruptcy
25 Procedure (the "Bankruptcy Rules"), authorizing the Association to limit notice of certain
26 pleadings in the Association's chapter 11 reorganization case. In support of this Motion, the
27 Association relies upon and incorporates by reference the "Declaration of Jon Held in Support
of Chapter 11 Petition" (the "First Day Declaration"), filed contemporaneously with this

1 Motion. In further support of this Motion, the Association respectfully states as follows:

2 **JURISDICTION AND VENUE**

3 1. The United States Bankruptcy Court for the District of Arizona (this “Court”)
4 has jurisdiction over this chapter 11 case, the Association, property of the Association’s estate
5 and this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the
6 meaning of 28 U.S.C. § 157(b)(2).

7 2. The Association consents to the entry of a final judgment or order with respect
8 to this Motion if it is determined that this Court, absent consent of the parties, cannot enter
9 final orders or judgments consistent with Article III of the United States Constitution.

10 3. Venue of this chapter 11 case in this district is proper under 28 U.S.C. §§ 1408
11 and 1409.

12 4. The statutory bases for the relief requested in this Motion are section 105 of the
13 Bankruptcy Code, Bankruptcy Rules 2002 and 9007, and Local Rules 1002-1 and 2002-1.

14 **BACKGROUND**

15 5. On February 9, 2021 (the “Petition Date”), the Association filed with this Court
16 a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

17 6. The Association continues to be in possession of its assets and manage its
18 properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy
19 Code. As of the date hereof, no trustee, examiner, or official committee of unsecured
20 creditors has been appointed in the Association’s chapter 11 case. No date has been set for a
21 meeting pursuant to 11 U.S.C. § 341 of the Bankruptcy Code.

22 7. Additional factual background regarding the Association, including its business
23 operations, and the events leading to the filing of this chapter 11 case, is set forth in detail in
24 the First Day Declaration, which is fully incorporated into this Motion by reference.

25 **RELIEF REQUESTED**

26 8. By this Motion, the Association respectfully requests that the Court enter an
27 order, substantially in the form attached hereto as Exhibit A, pursuant to section 105 of the

1 Bankruptcy Code, Bankruptcy Rules 2002 and 9007, and Local Rule 2002-1, authorizing the
2 Association to limit notice of certain pleadings in the Association’s chapter 11 case.

3 **BASIS FOR RELIEF**

4 **A. Factual Background.**

5 9. The Association submits that notice by mail of all the pleadings to all the
6 homeowners is impracticable and unduly burdensome under the circumstances. For the
7 notice of commencement, the Association is emailing and/or mailing them and sending them
8 a press release as well. After that, they will have actual notice of the reorganization case.

9 10. This is a nonprofit that cannot possibly afford to mail notice to all 2,395
10 homeowners of all pleadings. The homeowners are not creditors but parties in interest. Many
11 of the homeowners have more than one physical mailing address, e.g., one address in
12 Continental Country Club and one in Phoenix, Arizona. As the Declaration of Jon Held
13 demonstrates, the Association is also focused on addressing, for examples, the Lake Elaine
14 problem, reserving for needed capital improvements, and satisfying the balloon payment
15 owed to Sunwest Bank in October of 2021. In the Association’s business judgment, notice of
16 all pleadings to all homeowners is cost prohibitive and would cause immediate and
17 irreparable harm to the Association’s ability to reorganize. Further, such a constant drain on
18 the Association’s finances as an administrative expense would significantly decrease any
19 recovery for the Association’s creditors.

20 **B. Pleadings Otherwise Requiring Notice to All Creditors**

21 11. Bankruptcy Rule 2002 requires that notice “by mail” be provided to creditors
22 and parties-in-interest. See, e.g., FED. R. BANKR. P. 2002(a) (requiring 21 days’ notice “by
23 mail”); 2002(b) (requiring 28 days’ notice “by mail”). Bankruptcy Rule 2002(m), however,
24 provides that the Court may modify the noticing requirements. FED. R. BANKR. P. 2002(m)
25 (“The court may from time to time enter orders designating the matters in respect to which,
26 the entity to whom, and the form and manner in which notices shall be sent except as
27 otherwise provided by these rules.”). Rule 9007 likewise grants the Court the ability to

1 regulate notices. FED. R. BANKR. P. 9007 (“When notice is to be given under these rules,
2 the court shall designate, if not otherwise specified herein... the form and manner in which
3 the notice shall be given.”). Section 105(a) of the Bankruptcy Code further provides that the
4 Court “may issue any order, process, or judgment that is necessary or appropriate to carry out
5 the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a).

6 12. The Association requests authority to implement the following noticing
7 procedures for pleadings, pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1, that
8 require service upon the Association’s master mailing list: Unless a homeowner has filed a
9 notice of appearance or has provided written notice to the Association’s counsel requesting to
10 opt out of these notice procedures, the Association shall not serve notice to any homeowners
11 with property in Continental Country Club by mail, but shall instead post a pleading or notice
12 of a pleading on the Association’s web portal and issue an email to all homeowner members
13 registered with the Association with an email address that a new notice or pleading has been
14 posted.

15 13. First, given the expanse of the Association’s master mailing list, and due to the
16 significant cost savings achievable, service by web posting is not only appropriate in this
17 chapter 11 case and well within the Court’s equitable powers under section 105 of the
18 Bankruptcy Code and Bankruptcy Rules 2002(m) and 9007, it is necessary to limit the
19 Association’s administrative costs and allow it to successfully restructure its business affairs.

20 14. Second, as is provided for in Bankruptcy Rule 2002, the Association’s web
21 portal shall provide access to homeowners of all pleadings or notice of filing of same. If a
22 homeowner wishes to have a copy, they can contact undersigned counsel and a copy of the
23 pleading will be provided, in the event only a notice was given.

24 15. Third any homeowner wishing to continue to receive notice by mail, may opt
25 out of web portal notice procedures by contacting providing a written notice to the
26 undersigned counsel for the Association.

27 16. Overall, limiting service, as requested herein, for these parties will result in a

1 more efficient and cost-effective administration of this chapter 11 case and preserve for
2 unsecured creditors any chance that they may receive a distribution in this case. Based upon
3 the foregoing, the Association submits that the relief requested herein is appropriate and
4 should be approved.

5 **NOTICE**

6 17. Notice of this Motion will be provided to: (i) the Office of the United States
7 Trustee for the District of Arizona; (ii) counsel for the lakeside homeowners in the Lake
8 Elaine litigation; (iii) the parties included on the Association' list of twenty (20) largest
9 unsecured creditors; (iv) the Internal Revenue Service; (v) any party that has requested notice
10 pursuant to Bankruptcy Rule 2002; and (vi) any other party in interest entitled to notice of this
11 Motion. Due to the urgency of the circumstances surrounding this Motion and the nature of
12 the relief in it, the Association respectfully submits that no further notice of this Motion is
13 required.

14 WHEREFORE, the Association respectfully requests that the Court (i) enter an order,
15 substantially in the form attached hereto as **Exhibit A**, granting the relief requested in this
16 Motion, and (ii) grant such other and further relief as the Court may deem just and proper.

17 **DATED** this 10th day of February, 2021

18 **ENGELMAN BERGER, P.C.**

19 By: /s/ PAC, SBA # 023154

20 Scott B. Cohen
21 Patrick A. Clisham
22 Bradley D. Pack
23 2800 North Central Avenue, Suite 1200
24 Phoenix, Arizona 85004
25 Proposed Attorneys for Debtor and
26 Debtor in Possession Continental Country Club, Inc.
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COPY of the foregoing transmitted
via the Court's ECF system, and
as indicated this 10TH day of February,
2021, to the following parties:

Larry L. Watson
OFFICE OF THE U.S. TRUSTEE
Via Email: Larry.Watson@usdoj.gov
Via email: Christopher.Stewart2@ust.doj.gov

Alissa Brice Castaneda
QUARLES & BRADY
Email: Alissa.Castaneda@quarles.com
Attorneys for Sunwest Bank

By: /s/ Marie K. Kelly

EXHIBIT "A"

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re: CONTINENTAL COUNTRY CLUB, INC. <p style="text-align: center;">Debtor.</p>	Chapter 11 Proceedings Case No. 3:21-bk-00956-EPB
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**ORDER LIMITING SERVICE OF CERTAIN
PLEADINGS IN THE DEBTOR’S CHAPTER 11 CASE**

This matter coming before the court upon the Motion of the Debtor for Entry of an Order Limiting Service (the “Motion”), filed by the above-captioned debtor (“Debtor”), for entry of an order authorizing, but not directing, the Debtor to limit service of certain pleadings in the Debtor’s chapter 11 case; all as further described in the Motion; and upon consideration of the First Day Declaration (as defined in the Motion) and the record of this chapter 11 case; and this Court having found that (i) this Court has jurisdiction over the Debtor, its estate, property of its estate, and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (iv) venue of this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in

1 support of the relief requested in the Motion at a hearing before this Court (the “Hearing”);
2 and having determined that the legal and factual bases set forth in the Motion and the First
3 Day Declaration establish just cause for the relief granted in this Order; and this Court having
4 found and determined that the relief sought in the Motion is in the best interests of the
5 Debtor’s estate, its creditors and other parties in interest; and after due deliberation and
6 sufficient cause appearing therefor,

7 **IT IS HEREBY ORDERED THAT:**

- 8 1. The Motion is GRANTED as set forth in this Order.
- 9 2. Pursuant to section 105(a) of the Bankruptcy Code, and Bankruptcy Rules
10 2002(m) and 9007, the Debtor is authorized, but not directed, to implement the following
11 service and noticing procedures: Unless a homeowner has filed a notice of appearance or has
12 provided written notice to the Association’s counsel requesting to opt out of these notice
13 procedures, the Association shall not serve notice to any homeowners with property in
14 Continental Country Club by mail, but shall instead post a pleading or notice of a pleading on
15 the Association’s web portal and issue an email to all homeowner members that have
16 registered with the Association with an email address that a new notice or pleading has been
17 posted.
- 18 3. The Debtor is authorized and empowered to take all actions necessary to
19 effectuate the relief granted pursuant to this Order in accordance with the Motion.
- 20 4. This Court shall retain jurisdiction with respect to all matters arising from or
21 related to the implementation and/or interpretation of this Order.

22 DATED AND SIGNED ABOVE
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27

File a Motion:[3:21-bk-00956-EPB CONTINENTAL COUNTRY CLUB, INC.](#)

Type: bk

Chapter: 11 v

Office: 3 (Prescott)

Assets: y

Judge: EPB

U.S. Bankruptcy Court**District of Arizona**

Notice of Electronic Filing

The following transaction was received from PATRICK A. CLISHAM entered on 2/10/2021 at 3:52 PM AZ and filed on 2/10/2021

Case Name: CONTINENTAL COUNTRY CLUB, INC.**Case Number:** [3:21-bk-00956-EPB](#)**Document Number:** [10](#)**Docket Text:**

Motion to Limit Notice *Motion of the Debtor for Entry of an Order Limiting Service of Certain Pleadings in the Debtor's Chapter 11 Case* filed by PATRICK A. CLISHAM of ENGELMAN BERGER PC on behalf of CONTINENTAL COUNTRY CLUB, INC.. (CLISHAM, PATRICK)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**01189326.PDF**Electronic document Stamp:**

[STAMP bkecfStamp_ID=875559564 [Date=2/10/2021] [FileNumber=46749089-0] [8637e9b5ba94b6b334d6de5ece2b31bbd550c5fe3742a1aba42a2fea77cb197a0995a06dd8ca65c88699e67102dd050d616f748ed5cd1f3744df67a5e064ebd5]]

3:21-bk-00956-EPB Notice will be electronically mailed to:

PATRICK A. CLISHAM on behalf of Debtor CONTINENTAL COUNTRY CLUB, INC.
pac@eblawyers.com, cks@eblawyers.com, bdp@eblawyers.com, mkk@eblawyers.com

SCOTT B. COHEN on behalf of Debtor CONTINENTAL COUNTRY CLUB, INC.
sbc@eblawyers.com, mkk@eblawyers.com

LARRY L. WATSON on behalf of U.S. Trustee U.S. TRUSTEE
larry.watson@usdoj.gov, Christopher.stewart2@usdoj.gov, coleen.craig@usdoj.gov

3:21-bk-00956-EPB Notice will not be electronically mailed to:

PRA Receivables Management, LLC
PO Box 41021
Norfolk, VA 23541