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

11 In re:

12 CONTINENTAL COUNTRY CLUB,
13 INC., an Arizona Nonprofit corporation,

14 EIN 86-0414438

15 Reorganized Debtor.

Chapter 11

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

16 **MOTION FOR FINAL DECREE AND ORDER**
17 **CLOSING CASE AND FOR RELATED RELIEF**

18 Continental Country Club, Inc. (the “Reorganized Debtor”) hereby moves this Court for
19 entry of a final decree and order closing this chapter 11 reorganization case and for related
20 relief. In support of this Motion, the Reorganized Debtor states as follows:

21 **Introduction**

22 1. On February 9, 2021 (the “Petition Date”), Reorganized Debtor filed a voluntary
23 petition for relief under chapter 11 of title 11 of the United States Bankruptcy Code, 11 U.S.C.
24 §§ 101, et seq. (the “Bankruptcy Code”). From commencement of the bankruptcy case through
25 Plan confirmation, the Reorganized Debtor operated its business and managed its property as
debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

26 2. On October 8, 2021, Debtor filed its *Plan of Reorganization dated October 8,*
27 *2021* (Doc. 197) and accompanying *Disclosure Statement in Support of Debtor’s Plan of*

1 *Reorganization Dated October 8, 2021* (Doc. 196) (collectively, the “Initial Plan”).

2 3. On November 12, 2021, the Lakeside Legionnaires, a group of homeowners near
3 or adjacent to Lake Elaine, filed the *Lakeside Legionnaires’ Objection to the Debtor’s*
4 *Disclosure Statement* (Doc. 217) objecting to their proposed treatment under the Plan.

5 4. On April 21, 2022, Debtor filed its *Notice of Filing First Amended Plan of*
6 *Reorganization dated April 21, 2022* (Doc. 317) and *Notice of Filing First Amended Disclosure*
7 *Statement Dated April 21, 2022 and Related Exhibits* (Doc. 316) (collectively, the “First
8 Amended Plan” and together with the Initial Plan, the “Earlier Plans”).

9 5. On May 5, 2022, the Lakeside Legionnaires’ filed their *Objection to the Debtor’s*
10 *First Amended Disclosure Statement* (Doc. 319).

11 6. Debtor filed its *Response to the Lakeside Legionnaires’ Objection to First*
12 *Amended Disclosure Statement* (Doc. 322) on May 11, 2022.

13 7. On July 22, 2022, the Lakeside Legionnaires filed their *Objection to the Debtor’s*
14 *First Amended Plan of Reorganization* (Doc. 345).

15 8. On August 2, 2022, Debtor filed its *Notice of Filing Lake Elaine Design Plan as*
16 *Supplemental Exhibit to: First Amended Disclosure Statement in Support of Debtor’s First*
17 *Amended Plan of Reorganization Dated April 21, 2022* (Doc. 350).

18 9. On August 25, 2022, the Lakeside Legionnaires filed their *Supplemental*
19 *Objection to the Debtor’s First Amended Plan of Reorganization Addressing the Design of*
20 *Water Recreation Area for Class 6 Option B* (Doc. 362).

21 10. Debtor filed its *Response to the Lakeside Legionnaires’ Objection to the Debtors’*
22 *First Amended Plan of Reorganization* (Doc. 367) on September 9, 2022.

23 11. On May 10, 2021, Class Representatives filed a proof of claim reflected on the
24 Court claims register as Claim No. 15.

25 12. Debtor filed an objection to the Claim on August 8, 2022 at Doc. 351.

26 13. After protracted negotiations, Debtor and the Lakefront Group reached a
27 compromise of all claims arising between them, the terms of which have since been

1 memorialized in the Settlement Agreement executed between the parties on or about January
2 12, 2023.

3 14. On January 31, 2023, Debtor filed *Debtor's Second Amended Plan of*
4 *Reorganization* dated January 31, 2023 [Doc. 418] (the "Plan").¹

5 15. On March 2, 2023, the Court conducted a hearing on the confirmation of the Plan,
6 and Debtor was successful in confirming its Plan.

7 16. On March 6, 2023, the Court entered the *Amended Order Confirming Debtor's*
8 *Second Amended Plan of Reorganization* (Doc. 440).

9 17. On March 6, 2023, the court entered its *Order Approving Compromise* (Doc.
10 438), thereby granting approval of the Settlement Agreement between Debtor and the Lakeside
11 Legionnaires.

12 18. On March 6, 2023, in the Lakeside Legionnaires' adversary case, Case No. 3:21-
13 ap-00118, the court entered its *Order Approving the Class Settlement and Judgment* (Doc. 66),
14 which disposed of all claims and entered final judgment, leaving no outstanding matters in the
15 adversary case.

16 19. On March 15, 2023, Debtor filed its *Notice of Effective Date of Debtor's Second*
17 *Amended Plan of Reorganization* (Doc. 443), designating March 17, 2023 as the Effective Date
18 of the Plan.

19 **Substantial Consummation of the Plan**

20 20. The Plan contemplated that the Reorganized Debtor will assume Debtor's
21 business and management of the property dealt with by the Plan, and effectuate its
22 reorganization through a special assessment and increased dues that were approved by a
23 sufficient percentage of Debtor's Members. The Reorganized Debtor is to use the new fees
24 assessed and the ongoing revenues of the Reorganized Debtor's operations to fund its
25 obligations under the Plan.

26
27

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

1 Factors that the court should consider in determining whether the estate has
2 been fully administered include (1) whether the order confirming the plan
3 has become final, (2) whether deposits required by the plan have been
4 distributed, (3) whether the property proposed by the plan to be transferred
5 has been transferred, (4) whether the debtor or the successor of the debtor
6 under the plan has assumed the business or the management of the property
7 dealt with by the plan, (5) whether payments under the plan have
8 commenced, and (6) whether all motions, contested matters, and adversary
9 proceedings have been finally resolved.

10 The court should not keep the case open only because of the possibility that
11 the court's jurisdiction may be invoked in the future...

12 Fed. R. Bankr. P. 3022 advisory committee's note (1991 amendment). *See e.g., In re Mold*
13 *Makers, Inc.*, 124 B.R. 766 (Bankr. N.D. Ill. 1990; *In re Jordan Manufacturing Co., Inc.*, 138
14 B.R. 30 (Bankr. C.D.Ill. 1992); *In re Jay Bee Enterprises, Inc.*, 207 B.R. 536 (Bankr.E.D. Ky.
15 1997). In applying the six (6) factors articulated in the Advisory Notes, courts have noted that
16 “[t]he nature of these considerations calls for a flexible, case-by-case evaluation of a number of
17 procedural and practical factors.” *In re Johnson*, 402 B.R. 851, 856 (Bankr. N.D. Ind. 2009)
18 (citing *In re Union Home & Indus., Inc.*, 375 B.R. 917, 917 (B.A.P. 10th Cir. 2007)). Moreover,
19 “[t]he factors listed in the Advisory Note are not considered exhaustive, nor must a party
20 demonstrate all of the factors, before the court may find a case to be fully administered.” *Union*
21 *Home & Indus., Inc.*, 375 B.R. at 917 (citing *In re Mold Makers, Inc.*, 124 B.R. 766, 768 (Bankr.
22 N.D. Ill. 1990)); *see also In re Rebel Rents, Inc.*, 326 B.R. 791, 803 n.19 (Bankr. C.D. Cal.
23 2005) (“However, all of the factors in the Committee Note need not be present before the court
24 will enter a final decree.”)

25 Applying these six (6) factors to the case at hand supports that a Final Decree may be
26 entered at the conclusion of the Objection Period. All claim distributions required by the Plan
27 have either been made, or are on a timeline for payment under the Plan, and required payments,
if applicable at this time, have commenced. All Allowed Administrative Claims have been
paid. The Reorganized Debtor is operating the homeowners association and Club as provided

1 for in the Plan. In sum, the Plan has been substantially consummated and the estate has been
2 fully administered. The fact that certain of the Reorganized Debtors obligations under the Plan
3 are not yet matured or been satisfied should not prevent the Court from entering a final decree.

4 WHEREFORE, based on the foregoing, it is respectfully requested that this Court enter
5 a final decree and order (1) closing this case; (2) reserving jurisdiction to resolve any matters
6 related to this case as provided in the Plan; and (4) granting such further and other relief as may
7 be appropriate under the circumstances.

8
9 RESPECTFULLY SUBMITTED this 11th day of May, 2023.

10 **ENGELMAN BERGER, P.C.**

11 By: /s/ Patrick A. Clisham, SBA # 023154

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14 2800 North Central Avenue, Suite 1200
15 Phoenix, Arizona 85004
16 *Attorneys for Reorganized Debtor*

17 **COPY** of the foregoing transmitted
18 via the Court's ECF system to all
19 parties of record, and e-mailed this
20 11th day of May, 2023, to the following
21 parties **and posted to Debtor's web
22 portal for homeowners.**

23 Larry L. Watson
24 OFFICE OF THE U.S. TRUSTEE
25 Email: larry.watson@usdoj.gov

26 J. Richard Hull
27 Email: jrichard3@msn.com
Requester of notice of post-confirmation matters

/s/ Lydia K. Miller
Lydia K. Miller