

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	
	)	Chapter 11
CLAIRMONT PLACE	)	
CONDOMINIUM ASSOCIATION, INC.	)	Case No. 21-58123-LRC
	)	
Debtor.	)	SUBCHAPTER V

FIRST AMENDED PLAN OF REORGANIZATION

Dated this 9<sup>th</sup> day November 2022

Filed by:  
CLAIRMONT PLACE CONDOMINIUM  
ASSOCIATION, INC.

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Clairmont Place Condominium Association, Inc., Debtor and Debtor in Possession in the above-captioned case (“Debtor” or “Association”), pursuant to Sections 1123, 1189, and 1190 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 3016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), proposes this First Amended Plan of Reorganization (the “Plan”) for the resolution of the Claims against Debtor. Debtor is the proponent of this Plan as required under § 1189 of the Bankruptcy Code.

## **Article 1**

### **Contents of the Plan; Required Disclosures**

1.1 *Subchapter V Plan of Reorganization.* This Plan is filed under Subchapter V of Chapter 11 of the Bankruptcy Code.

1.2 *History of the Debtor’s Business and Business Operations.*

**Debtor.** Debtor is the Clairmont Place Condominium Association, Inc. (the “Association”), a Georgia non-profit corporation that is responsible for administering the Clairmont Place Condominium (“Clairmont Place” or “Condominium”). Clairmont Place is governed pursuant to that certain Amended and Restated Declaration of Condominium for Clairmont Place, A Condominium, recorded on December 21, 1995, in Deed Book 8811, Page 0024, DeKalb County, Georgia records (as amended, the “Declaration”). The Association is not tax exempt under § 501 of the Internal Revenue Code.

**Ownership.** The members of the Association (the “Owners”) are the respective owners of 209 condominium units located at 1800 Clairmont Lake, Decatur, Georgia (the “1800 Building” or “Condominium Building”). In addition to their ownership of their individual condominiums located in the 1800 Building, each Owner possesses, as specified in the Declaration, an undivided interest equivalent to his or her fraction of ownership, in the Common Elements of Clairmont Place, which includes, but is not limited to, the Service Center building located at 2100 Clairmont Lake (the “2100 Building”), whose first floor provides communal space and services to the Owners, and whose second floor houses the Montclair (as described below), a personal care community.

**Owners.** Owners of the Association must be aged 55 years of age or older. Current Owners average 85 years of age. The condominiums are occupied by their Owners except in rare exceptions of “hardship rentals” granted by the Board of Directors.

**Board of Directors:** Governance of the Association is through a seven-member Board of Directors (the “Board”).

**Senior Living at Clairmont Place:** Clairmont Place has an innovative and unique model of senior living, offering Owners the comfort and convenience of a hassle-free lifestyle, free from the burdens of home ownership with two especially attractive amenities: Montclair at Clairmont Place Personal Care Home (“Montclair”) and Dining Services.

Montclair offers extra support for those who are not fully independent. When Owners, or others from the community at large, require assistance with the activities of daily living, they can move to Montclair. Montclair is a personal care community licensed under State law pursuant to Chapters 2 and 7 of O.C.G.A. Title 31, permit granted pursuant to OCGA §31-87-3 and regulated pursuant to Rule 111-8-62 (Rule.sos.state.ga.us.gac). Admission to Montclair requires a physician's evaluation and certification that the Resident's needs can be safely met in a personal care home. (Rules of Georgia Department of Community Health, Healthcare Facility Regulation Division, Chapter 111-8-62-.15(viii)(f)(3).

The focused assistance at Montclair is limited to activities of daily living because Georgia state regulations specifically prohibit Personal Care or Assisted Living Communities from providing skilled nursing care services. Chapter 111-8-62-.15(e). Therefore, any health or skilled care services needed by residents are provided by outside, third-party providers who come to Montclair, in the same way as such outside providers might go to the home of any Georgia resident needing such services. Chapter 111-8-62-.15(f). These services vary and include physical therapy and hospice care.

It is this limitation prohibiting medical or nursing care that made a Personal Care Community attractive pre-Covid-19 pandemic. In addition to being less expensive without skilled nursing, Personal Care Communities have residents who generally function at a higher level than those in a nursing facility. The residents have the mobility to gather, engage in activities together, and form a community. But with the pandemic, occupancy levels plunged in Personal Care Communities nationwide. Georgia remains a state with low occupancy rates in such Communities. <https://www.mcknightsseniorliving.com/home/news/covid-down-interest-up-but-senior-living-occupancy-unchanged-as-inventory-grows/> The problem is compounded in the Atlanta area because the private-pay senior housing market in the Atlanta area was overbuilt before the pandemic hit. Many new facilities have opened in the past few years, outpacing an uptick in move-ins, as acknowledged by Beth Mace, chief economist for NIC (National Investment Center for Seniors Housing and Care). <https://www.ajc.com/news/georgia-senior-care-homes-struggle-to-rebound-after-pandemic/OSAK6YO5HBFF-PGDOJ2D4NNSB7M/> (July 14, 2021). The new facilities are more competitive on the open market than Montclair.

1.3 *Issues and Causes for the Bankruptcy Filing; the resolution of which will result in a more stable community, continuity of care and access to third party providers who can come to Debtor.*

- a. The lower occupancy at Montclair because of the Covid-19 pandemic
- b. The need to increase wages beginning in 2018, which was exacerbated during the Covid-19 pandemic
- c. Significant expenditures in maintenance incurred since 2018  
These are further explained below.

***a. The lower occupancy at Montclair because of the Covid-19 pandemic***

In March of 2020, Montclair followed the Georgia Governor's orders and imposed numerous restrictions intended to help keep residents from contracting Covid-19. Restrictions included prohibiting visits by family members, Residents dining alone in their rooms rather

than communally, and cessation of group activities and outings. Montclair handled several Covid-19 positive cases before vaccines became available. It was only after the vaccinations arrived, however, that Montclair had its largest Covid outbreak in July 2021; one fully vaccinated Resident died. Again, in September 2021, a fully vaccinated Resident contracted Covid-19 and died of the infection. A third fully vaccinated Resident died of Covid-19 in September 2022. This illustrates the reality that Montclair Residents are vulnerable to serious breakthrough infections. Moreover, if residents to contract Covid-19, it can weaken their immune system and make them more susceptible to other serious illnesses. The same is true in the reverse. It also illuminates why a family might choose to keep a loved one at home rather than place them in communal living with the increased risks of exposure to the deadly virus. <https://www.ajc.com/life/a-pandemic-upshot-seniors-having-second-thoughts-about-where-to-live/L2TL6WOX3BDIXFZAM5KE2Z2HTY/> Sept. 17, 2020 <https://www.wsj.com/articles/covid-spurs-families-to-shun-nursing-homes-a-shift-that-appears-long-lasting-11608565170> December 21, 2020 <https://www.ny-times.com/2021/05/06/health/covid-nursing-homes.html>

Attached hereto as Exhibit B and incorporated herein by reference as if set forth in its entirety is a timeline of how Covid-19 impacted Montclair.

The national outlook for assisted living facilities (the closest entity to personal care homes) is occupancy at 75%. Ziegler, Covid-19: One Year Later *Key Issues Update for Senior Living Providers*, May 26, 2021 at page 10. It is understood that North Carolina, South Carolina, and Georgia fall below this national trend. Montclair expects to track the national data – with occupancy levels down or below the national trend, and it is not expected to return to pre-pandemic levels. This represents a significant loss in revenue.

In expanding Montclair throughout the 20-teens, the Association believed their manager's prediction that Montclair would fund itself and would also generate additional revenue to assist with Association operational expenses. The Association became dependent on the revenue from Montclair for operations, while also maintaining affordable Association dues, which are paramount for the elderly Owners who chose Clairmont Place. Inflation weighs heavily. The Debtor's elderly Owners are currently facing high fee increases simply to cover the expenses of operating Debtor, from Dining Services with soaring food costs to on-going maintenance with increasing costs of supplies and the higher costs of labor. For example, Sysco, the primary food provider for Debtor, reported a 10.2% increase in food costs in the quarter before Debtor filed the Chapter 11 case. <https://www.washingtonpost.com/business/2021/09/15/food-inflation-faq/> As of the time of the filing of the Chapter 11 case, it was known that employee health insurance would increase 14% and other business insurance coverage was expected to increase by an average of 10%.

Montclair revenue for 2020 and 2021 was over \$1million dollars short of budgeted revenue. Montclair has survived because it was able to reduce staffing as occupancy declined, was able to meet payroll because of federal pandemic funds, and was able to have some operating costs covered by the Association. These temporary stop gap measures helped, but pandemic funding ended, and the Association was then required to tap and reduce reserves, necessitating the filing of the chapter 11 case.

***b. The need to increase wages beginning in 2018, which was exacerbated during the Covid-19 pandemic.***

The restaurant industry has had difficulty reopening during the pandemic. News articles describe the shortage of labor and the demand for increased wages. The Association has a Dining facility for both its condominium Owners and for its Montclair Residents. By June 2021, Debtor had increased its starting hourly wage for dishwashers from \$10 (in 2018) to \$13 (2021), but area restaurants were hiring at \$15 to \$18 hourly. In an effort to retain the Dining Services staff that had safely prepared and delivered meals to Residents and Owners for over a year and in an effort to attract new staff as Dining Services began to reopen public dining, Debtor increased Dining Services wages by up to 20%.

Although not reported as widely in the news, care staff in long-term care communities are similarly in short supply. This began pre-pandemic and has been exacerbated by the widespread presence of Covid-19 in long-term care communities. Hourly wages, already increased by an average of 32% percent since 2018, will need to be increased to retain and attract appropriate staff. Because Montclair is staffed 24 hours a day, seven days a week, the increase in the wages of front-line workers has a substantial impact on

operating expenses. <https://www.premiernursingacademy.org/blog/cna-shortages>  
<https://caremerge.com/how-Covid-19-has-shaped-the-cna-shortage-why-better-tech-can-make-a-difference/>

***c. Significant expenditures have been necessitated and incurred since 2019 remedialing deferred and inadequate maintenance***

In 2016, tree roots had risen to the surface causing substantial upheavals and cracks in the Association’s parking lot. To repair this issue, the Association had to have a tree company grind down the roots before the asphalt could be patched. Beginning in 2018, a range of maintenance issues began to surface that required the expenditure of funds. A comprehensive listing of these maintenance issues is at end of document as Exhibit C and is incorporated herein as if set forth in its entirety. The chart below shows the amount spent by year in maintenance and capital improvements to the facility.

Year	Total Amount actually spent in Maintenance	Total amount actually spent on Maintenance – not on decorating	Capital expenditures
2018	\$1,266,553	\$1,266,553	\$248,005
2019	\$1,359,466	\$1,359,466	\$370,258
2020	\$1,348,897	\$1,348,897	\$227,766
2021 through 9/30	\$1,519,602	\$1,519,602	\$480,785

***1.4 The History of the Primary Debt in the Case as a Cause for the Filing***

Summary: The Association’s primary debt arises from a settlement agreement entered into as of July 11, 2018 between the Association and its former manager, Paul McGough (the “Settlement Agreement” and “McGough”) and his solely owned entities, Paul McGough Realty, LLC (“PMR”) and Senior Association Management, LLC (“SAM”). Under the Settlement Agreement the Association was to pay McGough \$30,000 per month, i.e., \$360,000 per year—a financial obligation that would continue through part of 2038—in order to settle

McGough's claim arising from contracts for improvements that he and his companies proposed to make to Montclair and the first floor of the 2100 Building.

These Settlement Agreement payments represented 19% of Montclair's 2022 projected gross revenue of \$1,929,000 and 6% of the Association's \$6,317,613 projected gross revenue. Notably, the Association is not a moneyed business that generates revenue for profit, it is, rather, a non-profit association of elderly homeowners.

As noted above, in the period since the Settlement Agreement was entered into, in July, 2018:

- a global pandemic has drastically reduced occupancy at the Montclair, exacerbated by overbuilding of assistant living facilities in Metro Atlanta,
- it has become essential to substantially raise the salaries of the Association's staff to attract and retain staff, and
- a wide variety of construction and maintenance issues have come to light as set forth in detail in Exhibit C requiring the expenditures of significant funds for remediation.
- High inflation rates have added to the financial burden.

Despite these difficult circumstances, the Association asserts that it would have been able to manage its financial affairs, but for the burden imposed by the primary debt. The Association was able to pay the primary debt and pay for multiple extraordinary maintenance projects until the impact of this pandemic decreased its revenue stream and increased operating costs. The Association cannot financially manage the multiple costs of the pandemic, sustained maintenance needs, and continued monthly payments of \$30,000 to prior management.

#### *1.5 Current Management and Employees.*

The Board, Ms. Gatra Mallard, President, Ms. Joyce Dove, Vice President; Ms. Helen O'Shea, Secretary; Mr. Graham Kerr, Treasurer, Mr. Bill Thomas, Mr. Harold Baird and Ms. Jeanette Schroeder, is elected on staggered terms.

##### 1.5.2 Insiders Employed by Debtor. None.

#### *1.6 Liquidation Analysis.*

Liquidation of the Debtor would result in a lower net payment to creditors and would wreak havoc in the lives of its vulnerable senior residents, whose lives have already been up-ended enduring 18 months and more of Covid-19 pandemic living and would threaten the continued existence of the Association as a Condominium under state law. Although many Owners were active seniors when they purchased their condominiums, they have aged in place and have become frailer with time. An example of increased vulnerability stems from a small fire on June 12, 2021, which caused a fire sprinkler to go off in one unit on the fifth floor of the Condominium Building. The water damaged fifteen other condominiums as it flowed into neighboring condominiums and down into the lower floors. In the immediate aftermath, two of the Owners moved into Montclair, as they were simply unable to continue living independently in their condominium.



Theoretically, conversion and liquidation under Chapter 7 of the Bankruptcy Code would result in the appointment of a Chapter 7 trustee and the liquidation of assets, which are limited in nature since the Association has limited assets and no ownership interest in real property. Assets disposed of by “liquidation” or “fire” sale generally generate significantly less proceeds than assets that are marketed and sold as a going concern. Furthermore, the actual liquidation value of the assets, after costs of sale would be realized rather than a “going concern” value. Additionally, a trustee would incur trustee’s fees pursuant to §§ 326(a), 330 or 1194 of the Bankruptcy Code.<sup>1</sup> As noted below, the Association is not the type of entity which can be forcibly liquidated under Chapter 7.

Further issues with the liquidation of Debtor are:

(1) The vast majority of the assets at the Association are held in fee simple ownership by the Owners pursuant to the Association’s Declaration. The Debtor itself owns no significant assets. The assets are furniture, decorations, vehicles, and equipment.

(2) The Debtor is not a moneyed business or commercial corporation and is, therefore, not subject to conversion to a chapter 7 liquidation unless it is voluntary pursuant to §1112(c).

(3) The income generated by the Montclair is currently net negative or revenue neutral as there are expenses associated with producing that revenue which negate any positive value to it. The long-term impact of the Covid-19 pandemic is impossible to anticipate.

In September 2021, the Association retained Bullseye Auction and Appraisal to conduct an appraisal of its assets at current market value and at liquidation value. In a liquidation, the trustee would incur costs associated with liquidation, such as broker fees that are anticipated to be 25% including all commissions and fees along with another \$1,500.00 in expenses such as advertising. The details of a hypothetical liquidation are as follows: In the event Debtor’s estate is liquidated, the unsecured creditors would not receive any significant return. The value of a forced sale of Debtor’s furnishings is estimated at \$80,770.00 before the costs and expenses of the sale. 25% of \$80,770.00 is \$20,192.50 leaving a best-case recovery of \$60,577.50 less the \$1,500.00 in expenses. It is expected that liquidation of the personal property may bring \$60,000.00.<sup>2</sup>

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<sup>1</sup> 11 USC § 326(a) states that a Chapter 7 trustee would incur trustee’s fees equal to 25% of the first \$5,000 of Liquidation Value of Assets; 10% of amount in excess of \$5,000 but not in excess of \$50,000 of Liquidation Value of Assets; 5% of any amount in excess of \$50,000 but not in excess of \$1,000,000; 3% of any amount in excess of \$1,000,000 of the Liquidation Value of Asset, and commissions for auctioneers for personal property generally is equivalent to ten (10%) percent of the gross sales price and commissions for real property brokers is generally six percent (6%) of the gross sales price. In addition, the attorney for the Chapter 7 trustee would incur attorney’s fees as would the current Chapter 11 attorneys. 11 USC § 330 provides for reasonable compensation for actual, necessary service rendered by the trustee and reimbursement for actual, necessary expenses. The Subchapter V trustee’s hourly rate is \$350.00.

<sup>2</sup> Paul McGough asserts that the Debtor’s right to lease the 2100 Building to a third party has significant value, which Debtor disputes. The settlement between McGough and Debtor incorporated into this Plan negates any need to have the issue determined by the Court.

There is a specialty van that is a vital component for the mobility of resident, which was donated in September 2021 by two generous Owners for the enjoyment of the Owners, replacing the 2010 bus that kept breaking down. The Owners are anonymous donors, but both have made the gift they purchased for \$90,000 conditional on the use and enjoyment of Owners. In the event of a sale for any reason, the proceeds are to be returned to the donors. The vehicle is a depreciating asset with a limited market- There is also a golf cart and a 2002 Lincoln Town car worth less than \$5,000.00 dollars, combined, which if liquidated would have costs of sale, resulting in a negligible value for creditors.

Debtor has no tax attributes with any value for the estate. There are net operating losses disclosed on Debtor's tax returns but they only have value against profits. There have been no positive profits against which they can be applied to turn these into value for the benefit of creditors.

Debtor had minimal accounts receivable when the case was filed. Debtor has cash in the bank needed to operate, including necessary reserves, and retainers with professionals. This cash totaled \$270,000 at the time of filing the Petition, some of which could be used in a liquidation.

It is anticipated that all of the above-described assets would bring creditors, at best, \$185,000 in a liquidation.

Although Montclair has had negative income for the past few years, there is a possibility that there is some value in Montclair as an economic entity. A business valuation conducted by Adams Capital Valuation Services places this value at \$340,000.00 but attributes this value to the Owners of the Association and does not expect that this \$340,000 could be obtained on the open market given the physical condition of the Montclair, including its size and age.

The proposed Plan contemplates payment of \$425,984.07 over 5 years, which is a payment greater than any recovery under liquidation and pays fully all creditors who submitted claims with the exception of Paul McGough. The payments to Paul McGough will last for 280 months. The payments to McGough are set forth separately below and when added to the payments on the unsecured debt result in payments to creditors well in excess of what could be expected with a liquidation of the Debtor.

Year one:	\$ 1,084.07	(DeKalb County Tax Commissioner)
Year two:	\$ 16,225	(Sysco, Grainger, and PSI Security)
Year three:	\$ 16,225	(Sysco, Grainger, and PSI Security)
Year four:	\$ 16,225	Sysco, Grainger, and PSI Security)
Year five:	\$ <u>16,225</u>	(Sysco, Grainger, and PSI Security)
<b>Sub TOTAL:</b>	<b>\$ 65,987.54</b>	

Payments to Paul McGough:

Interest Rate:	3.25%
Monthly Payment Years 1-5	\$ 6,296.87
Monthly Payment Years 6-7	\$ 10,000.00
Monthly Payment Years 8-23.3	\$ 15,000.00



Present Value	\$2,325,000.00
Sum of Payments	\$3,557,812.20

1.7 *Alternative Confirmation Standards Under § 1191(a) and (b).*

Debtor seeks to confirm this Plan by obtaining the consent of all Classes provided for in this Plan by a majority in number and two-thirds in amount of Allowed Claims actually voting. If Debtor succeeds in obtaining the consent of all Classes, the provisions of the Plan referencing and operating under § 1191(a) of the Bankruptcy Code will apply. If Debtor is unable to obtain the consent of all Classes, Debtor will request the Court to confirm the Plan under 1191(b). In this case, the provisions of the Plan referencing and operating under § 1191(b) of the Bankruptcy Code will apply.

1.8 *Property and Claims.* This Plan deals with all property of Debtor and provides for treatment of all Claims against Debtor and its property.

## **Article 2**

### **Definitions and General Provisions**

For the purposes of this Plan, except as otherwise expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in this Article of the Plan. Any term that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term therein.

2.1 *Definitions.* The following terms, when used in this Plan, shall have the following meaning:

2.1.1 “Administrative Expense Claim” means a Claim for payment of an administrative expense entitled to priority under § 507(a)(2) of the Bankruptcy Code.

2.1.2 “Allowed Claim” shall mean a Claim or any portion thereof that is enforceable against Debtor or enforceable against the property of Debtor under §§ 502 or 503 of the Bankruptcy Code.

2.1.3 “Allowed Secured Claim” shall mean the amount of the allowed Claim held by parties, secured by property of Debtor, which is equal to the amount provided by the Plan, unless such other amount is stipulated as constituting the allowed secured claim between the parties, or such amount as the Bankruptcy Court allows by entered Order.

2.1.4 “Allowed Unsecured Claim” shall mean Allowed Claims which are not allowed as administrative, priority, or secured claims.

2.1.5 “Assets” means, collectively, all of the property, as defined by § 541

of the Bankruptcy Code, of the Estate of Debtor (including without limitation, all of the assets, property, interests (including equity interests) and effects, real and personal, tangible and intangible, including all Avoidance Actions), wherever situated as such properties exist on the Effective Date or thereafter.

2.1.6 “Avoidance Action” means any claim or cause of action of the Estate arising out of or maintainable pursuant to §§ 502, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code or any other similar applicable law, regardless of whether such action has been commenced prior to the Effective Date.

2.1.7 “Ballot” means each of the ballot forms that are distributed with the Plan to Holders of Claims included in the Classes that are Impaired under this Plan and are entitled to vote.

2.1.8 “Bankruptcy Case” means the chapter 11 case initiated by Debtor’s filing on the Filing Date of a voluntary petition for relief in the Bankruptcy Court under Subchapter V of Chapter 11 of the Bankruptcy Code.

2.1.9 “Bankruptcy Code” means title 11 of the United States Code.

2.1.10 “Bankruptcy Court” means the United States Bankruptcy Court for Northern District of Georgia, Atlanta Division.

2.1.11 “Bankruptcy Rules” means, collectively, the Federal Rules of Bankruptcy Procedure.

2.1.12 “Business Day” means any day on which the commercial banks are required to be open for business in Atlanta, Georgia and which is not a weekend or legal holiday recognized by the Bankruptcy Court or the Superior Courts of the State of Georgia.

2.1.13 “Cash” means legal tender of the United States of America and equivalents thereof.

2.1.14 “Causes of Action” means all Avoidance Actions and any and all of Debtor’s actions, suits, accounts, agreements, promises, rights to payment and claims against other persons, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured, and whether asserted or assertable directly or derivatively, in law, equity, or otherwise.

2.1.15 “Chapter 11” means chapter 11 of the Bankruptcy Code.

2.1.16 “Claim” means a claim against Debtor whether or not asserted, as defined in § 101(5) of the Bankruptcy Code.

2.1.17 “Classes” means a category of Claims described in this Plan.

2.1.18 “Confirmation Date” means the date on which the Bankruptcy Court enters the Confirmation Order.

2.1.19 “Confirmation Hearing” means the hearing before the Bankruptcy Court held to consider confirmation of this Plan and related matters under § 1191 of the Bankruptcy Code, as such hearing may be continued.

2.1.20 “Confirmation Order” means the order confirming this Plan pursuant to § 1191 of the Bankruptcy Code that the Bankruptcy Court enters, which shall be in all respects reasonably acceptable to Debtor.

2.1.21 “Debtor” shall mean Clairmont Place Condominium Association, Inc., the debtor in this Bankruptcy Case.

2.1.22 Intentionally Omitted.

2.1.23 “Disallowed Claim” means a Claim or any portion thereof that: (i) has been disallowed by a Final Order, (ii) is listed in any of Debtor’s Schedules at zero, unknown, contingent, disputed, or unliquidated and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court, (iii) is listed in Debtor’s Schedules and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court. or (iv) is not listed in Debtor’s Schedules and as to which a proof of claim bar date has been established but no proof of claim has been timely filed or deemed timely filed with the Bankruptcy Court.

2.1.24 “Disputed Claim” means, with reference to any Claim, a Claim or any portion thereof, that is the subject of an objection timely filed in the Bankruptcy Court and which objection has not been withdrawn, settled or overruled by a Final Order of the Bankruptcy Court.

2.1.25 “Distribution” means any distribution by Debtor to a Holder of an Allowed Claim.

2.1.26 “District Court” means the United States District Court for the Northern District of Georgia, Atlanta Division.

2.1.27 “Effective Date” means the date that is 45 days after entry of a Confirmation Order.

2.1.28 “Estate” means, with regard to Debtor, the estate that was created by the commencement by Debtor of the Bankruptcy Case pursuant to § 541 of the Bankruptcy Code, and shall be deemed to include, without limitation, any and all rights, powers, and privileges of Debtor and any and all of Debtor’s interests in property, whether real, personal or mixed, rights, causes of action, avoidance powers or extensions of time that such Debtor or such estate shall have had as of the commencement of the Bankruptcy Case, whether by virtue of §§ 541, 544, 545, 546, 547, 548, 549 or

550 of the Bankruptcy Code, or otherwise. In the event that this Plan is confirmed by the Bankruptcy Court under § 1191(b) of the Bankruptcy Code, such definition shall also include (1) all of the property defined by § 541 of the Bankruptcy Code that the Debtor has acquired after the Filing Date but before the case is closed, dismissed, or converted to a case under Chapter 7, 12, or 13 whichever occurs first and (2) any earnings from services performed by the Debtor, both that Debtor acquires after the Filing Date but before the Bankruptcy Case is closed, dismissed, or converted to a case under Chapter 7, 12, or 13, whichever occurs first.

2.1.29 “Executory Contract or Unexpired Lease” means all executory contracts and unexpired leases to which Debtor is a party.

2.1.30 “Filing Date” means the date on which Debtor filed its petition in the Bankruptcy Court, October 29, 2021.

2.1.31 “Final Distribution” means the Distribution by Debtor that satisfies all Allowed Claims to the extent provided in accordance with the Plan.

2.1.32 “Final Distribution Date” means the Distribution Date on which the Final Distribution is made.

2.1.33 “Final Order” means an order of the Bankruptcy Court, the District Court, or any other court as to which (i) any appeal that has been taken has been finally determined or dismissed, or (ii) the time for appeal has expired and no appeal has been filed timely. In the case of an order of the Bankruptcy Court, the time for appeal, for purposes of this definition, shall be the time permitted for an appeal to the District Court.

2.1.34 “Holder” means a holder of a Claim or Interest, as applicable.

2.1.35 “Impaired” shall have the meaning ascribed thereto in § 1124 of the Bankruptcy Code.

2.1.36 “Initial Distribution Date” means the first business day after the Effective Date.

2.1.37 “Lien” has the meaning set forth in § 101(37) of the Bankruptcy Code.

2.1.38 “Montclair” shall mean that Personal Care business conducted as an economic enterprise on the second floor of the 2100 Building.

2.1.39 “Person” means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, governmental unit (as defined in § 101(27) of the Bankruptcy Code) or other legal entity.

2.1.40 “Plan” means this plan of reorganization as same may hereafter be corrected, amended, supplemented, restated, or modified.

2.1.41 “Priority Claim” means a Claim entitled to priority under the provisions of § 507(a) of the Bankruptcy Code other than an Administrative Expense Claim or a Priority Tax Claim.

2.1.42 “Priority Tax Claim” means a Claim against Debtor that is of a kind specified in § 507(a)(8) of the Bankruptcy Code.

2.1.43 “Professional Compensation” means (1) any amounts that the Bankruptcy Court allows pursuant to § 330 of the Bankruptcy Code as compensation earned, and reimbursement of expenses incurred, by professionals employed by Debtor and Subchapter V trustee, if any, and (ii) any amounts the Bankruptcy Court allows pursuant to §§ 503(b)(3) and (4) of the Bankruptcy Code in connection with the making of a substantial contribution to the Bankruptcy Case.

2.1.44 “Record Date” means any date established in the Confirmation Order or any other Final Order of the Bankruptcy Court for determining the identity of holders of Allowed Claims entitled to Distributions under this Plan. If no Record Date is established in the Confirmation Order or any other order of the Bankruptcy Court prior to the Confirmation Date, then the Record Date shall be the Confirmation Date.

2.1.45 “Record Holder” means the Holder of a Claim as of the Record Date.

2.1.46 “Released Parties” means Debtor.

2.1.47 “Retained Action” means all claims, Causes of Action, rights of action, suits and proceedings, whether in law or in equity, whether known or unknown, which Debtor or Debtor’s Estate may hold against any Person, including, without limitation, (i) claims and Causes of Action brought prior to the Effective Date, (ii) claims and Causes of Action against any Persons for failure to pay for products or services provided or rendered by Debtor, (iii) claims and Causes of Action relating to strict enforcement of Debtor’s intellectual property rights, including patents, copyrights and trademarks, (iv) claims and Causes of Action seeking the recovery of Debtor’s accounts receivable or other receivables or rights to payment created or arising in the ordinary course of Debtor’s business, including without limitation, claim overpayments and tax refunds, and (v) all Causes of Action that are Avoidance Actions.

2.1.48 “Schedules” means the Schedules of Assets and Liabilities Debtor filed in the Bankruptcy Case, as such Schedules may be amended from time to time in accordance with Bankruptcy Rule 1009.

2.1.49 “Secured Claim” means a Claim against Debtor to the extent secured by a Lien on any property of Debtor on the Petition Date to the extent of the value of said property as provided in § 506(a) of the Bankruptcy Code.

2.1.50 “Subchapter V Trustee” means the individual appointed by the United States Trustee under § 1183(a) of the Bankruptcy Code to serve as the Subchapter V trustee in this Bankruptcy Case, Leon S. Jones, and any successor trustee.

2.1.51 “Subordinated Claim” means any Unsecured Claim that is subordinated in priority to all other Allowed Unsecured Claims pursuant to the provisions of § 510 of the Bankruptcy Code or other applicable law.

2.1.52 “Unimpaired” means, with respect to a Class of Claims or Interests, any Class that is not Impaired.

2.1.53 “Unsecured Claim” means any Claim against Debtor that is not a Secured Claim, a Priority Claim, a Priority Tax Claim, or an Administrative Expense Claim.

2.1.54 “2100 Building” means that building located at 2100 Clairmont Place, Decatur, Georgia serving as the Service Center for the Debtor.

2.1.55 “1800 Building” means that building located at 1800 Clairmont Place serving the 209 condominium owners.

2.2 *Time.* Whenever the time for the occurrence or happening of an event as set forth in this Plan falls on a day which is a Saturday, Sunday, or legal holiday under the laws of the United States of America or the State of Georgia, then the time for the next occurrence or happening of said event shall be extended to the next day following which is not a Saturday, Sunday, or legal holiday.

2.3 *Events of Default.* Unless otherwise specifically provided for in a class under the Plan, in the event of a default by Debtor in payments under the Plan or otherwise, the Holder must send written notice (“Default Notice”) to Debtor at the addresses of record for Debtor as reflected on the docket for this Bankruptcy Case, unless Debtor has provided the Holder with a written notice of a change of address. Such Default Notice must contain the reason for the default and, if such default is monetary, the amount of the default and amount necessary to cure the default, as well as notice that Debtor has fourteen (14) business days (in the case of a monetary default) and thirty (30) days (in the case of a non-monetary default) from receipt by Debtor and Debtor’s counsel of the Default Notice (or the following business day if the 14th or 30th day does not fall on a business day) to cure such default (and the address for payment, which will accept overnight deliveries, in the event of a monetary default). The Holder must send such Default Notice to (a) Debtor via certified mail or recognized overnight carrier with a copy to Debtor via email or fax and (b) by certified mail to Shayna M. Steinfeld (Steinfeld & Steinfeld, PC) at the address reflected in the then current directory of the State of Bar of Georgia with a copy via email or fax. Debtor shall have fourteen (14) business days or thirty (30) days (as applicable) from Debtor’s and Debtor’s counsel’s receipt of the Default Notice by mail to cure such default. For Class 6 creditor, Paul McGough, there will be a 5% penalty assessed against Debtor in the event of two consecutive months in which McGough notifies Debtor that payment is late and said default remains uncured by Debtor. This 5% penalty will be based on the remainder calculated when payments made by Debtor towards principal are subtracted from \$2,325,000.00. Upon such second uncured consecutive default,



McGough may (i) exercise all rights and remedies available under his *Collateral Assignment of Lease or Leases and Rents*, as the same has been amended, restated, and modified, including the appointment of a receiver in the Superior Court of DeKalb County, (ii) seek such relief as may be appropriate in the Bankruptcy Court, or (iii) seek appointment (with Bankruptcy Court approval or consent of Debtor) of a Chief Restructuring Officer, Turnaround Specialist, or similar professional to exercise control and oversight over the operations, revenue, and expenses of the Montclair, and the Association shall cooperate and provide access and financial information with respect to the Montclair as required by such professional.. Receipt by Debtor's Attorney shall not be deemed receipt by Debtor of the required Default Notice. Notwithstanding anything to the contrary in the Plan or otherwise, a default under one Class of Claims or sub-class of Claims shall not constitute a default under any other Class of Claims or sub-class of Claims. (For example, a default under Class 1 shall not constitute a default under Class 3).

2.4 *Notices*. All notices under the Plan shall be in writing. Unless otherwise specifically provided herein, all notices shall be sent to Debtor via U.S. Certified Mail, Return Receipt or by recognized overnight carrier to the address of record for Debtor in this Case, unless Debtor has provided such Holder with written notice of change of address for Debtor, with a copy via email or fax and certified mail or nationally recognized overnight delivery service to Shayna M. Steinfeld (Steinfeld & Steinfeld, PC) at the address reflected in the then current directory of the State Bar of Georgia. Receipt of notice by Shayna M. Steinfeld (Steinfeld & Steinfeld, PC) shall not be deemed receipt by Debtor of the required notice. Notice to creditors may be provided (a) at the address set forth on the proof of claim filed by such Holder, (b) at the address set forth in any written notices of address change delivered to Debtor after the date of any related proof of claim, (c) at the addresses reflected in the Schedules if no proof of claim has been filed and Debtor has not received a written notice of a change of address, or (d) if the Holder's address is not listed in the Schedules, at the last known address of such Holder according to the Debtor's books and records. Notices shall be deemed received: (i) on the day transmitted if sent via fax or email and (ii) on the day delivered if sent via nationally recognized overnight delivery service or Certified Mail Return Receipt.

### **Article 3**

#### **Classification of Claims and Interests**

3.1 *Summary*. The categories of Claims and Interests set forth below classify all Claims against Debtor for all purposes of this Plan. A Claim or Interest shall be deemed classified in a particular Class only to the extent the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. The treatment with respect to each Class of Claims and Interests provided for in Article 4 shall be in full and complete satisfaction, release and discharge of such Claims and Interests.

#### 3.2 *Classes*:

3.2.1 Class 1 shall consist of the Secured or Priority Tax Claim of the Internal Revenue Service.

3.2.2 Class 2 shall consist of the Secured or Priority Tax Claim of the Georgia Department of Revenue.

3.2.3 Class 3 shall consist of the Secured or Priority Tax of DeKalb County, Georgia Tax Commissioner.

3.2.4 Class 4 shall consist of the Secured or Priority Tax of Governmental Units Not Otherwise Classified, such as DeKalb Sanitation Division.

3.2.5 Class 5 shall consist of the Executory Contract Claims.

3.2.6 Class 6 shall consist of the Secured Claim of Paul McGough.

3.2.7 Class 7 shall consist of General Unsecured Claims under \$1 million.

3.2.8 Class 8 shall consist of General Unsecured Claims which fall into a class of claims for convenience, defined as those under \$7,500.00.

3.2.9 Class 9 shall consist of Interest Claims.

#### **Article 4** **Treatment of Claims and Interests**

The Classes, the treatment of each Class, and the voting rights of each Class are set forth below. Debtor reserves the right to pay any claim in full at any time in accordance with the terms of the Plan (i.e. at the percentage distribution designated in the Plan and including any accrued and unpaid interest, if any) without prepayment penalty. Remaining payments will be reduced by 5% in the event that Debtor pays the Class 6 creditor, Paul McGough, on or before January 15, 2033. The Court scheduled a non-governmental bar date for filing claims of **January 7, 2022**. [Doc. No. 10]. In order to participate in any of the below distributions under this Chapter 11 Plan, a claim must have been filed of record with the Court by that date.

4.1 *Class 1: Secured or Priority Tax Claim of the Internal Revenue Service:* Class 1 shall consist of any Secured Claim or Priority Tax Claim held by the Internal Revenue Service (the “IRS”) which was assessable or due and payable prior to the Filing Date or treated as arising prior to the Filing Date pursuant to 11 U.S.C. §502(i) (the “Class 1 IRS Tax Claim”). Any Class 1 IRS Tax Claim (or as otherwise allowed by the Court) shall be paid pursuant to Class 1, and any IRS general unsecured tax claim is specifically classified and will be paid pursuant to the General Unsecured Class 7 or 8. Debtor shall pay the Allowed Class 1 IRS Tax Claim in equal monthly payments commencing on the 28th day of the first full month following the Effective Date and continuing on the 28th day of each subsequent month (or the next Business Day if the 28th day is not a business day). Interest shall accrue on the principal amount due on the Class 1 IRS Tax Claim. The IRS Tax Claim may be comprised of estimated corporate taxes and FICA and FUTA taxes for January 1, 2021 through December 31, 2021. Debtor believes that no such taxes are owing. Any interest would accrue at the annual

rate of 3.91% (as provided under 26 U.S.C. § 6621 and 11 U.S.C. § 511) or such lesser rate as (i) agreed to by the IRS or (ii) indicated on the applicable IRS proof of claim from the Effective Date. Notwithstanding anything to the contrary herein, Debtor shall pay any balance of the Allowed Class 1 IRS Tax Claim with a balloon payment on the 5-year anniversary of the Filing Date. Any third-party payments or payments in excess of the scheduled distribution pursuant to Class 1 received by the Internal Revenue Service shall be applied to the principal tax obligation of the Class 1 IRS Tax Claim owed by Debtor pursuant to Class 1. Debtor's Class 1 payments shall be applied in the following order: (i) interest accruing on the Class 1 Tax Claim after the Effective Date under the Plan, (ii) the taxes included in the Class 1 IRS Tax Claim and (iii) interest and penalties which accrued prior to the Filing Date and Effective Date. Upon passage of bar date for filing proofs of government claim, any claim asserted or assertable by the IRS on or before the Filing Date or treated as arising prior to the Filing Date pursuant to 11 U.S.C. §502(i) shall: (i) be time barred and fixed as provided in the Plan, subject to Debtor's right to object to the same and (ii) any other, additional or amended claim assessable on or prior to the Filing Date shall be disallowed in its entirety and forever discharged. Debtor shall pay any claim of the IRS assessable, arising prior to the Filing Date or treated as arising prior to the Filing Date pursuant to 11 U.S.C. §502(i) on the terms set forth herein, and the IRS shall be permanently enjoined from seeking payment in excess of the amounts provided for in the Plan for such claims. A failure by the Debtor to make a payment on the Class 1 IRS Tax Claim to the IRS pursuant to the terms of the Plan shall be an event of default as to the IRS. In the event of a default under Class 1, the IRS must send a Default Notice to Debtor in accordance with Article 2.3 of the Plan. Such Default Notice must contain the reason for the default and if such default is monetary, the amount of the default and amount necessary to cure the default and the address for payment, which will accept overnight deliveries. Receipt by Debtor's attorney shall not be deemed receipt by Debtor of the required Default Notice. In the event of an uncured default following proper Default Notice procedures and opportunity to cure pursuant to Article 2.3 of the Plan, the IRS may (a) enforce the entire amount of its then outstanding Allowed Class 1 IRS Tax Claim; (b) exercise any and all rights and remedies it may have under applicable non-bankruptcy law regarding the Allowed Class 1 IRS Tax Claim; and (c) seek such relief as may be appropriate in the Bankruptcy Court. The amount of any claim of the IRS that is not otherwise assessable or due and payable on or prior to the Filing Date or treated as arising prior to the Filing Date pursuant to 11 U.S.C. §502(i) shall, and the right of the IRS, if any, to payment in respect thereto shall (i) be determined in the manner in which the amount of such Claim and the rights of the IRS would have been resolved or adjudicated if the Bankruptcy Case had not been commenced, (ii) survive after the Effective Date as if the Bankruptcy Case had not been commenced, and (iii) not be discharged pursuant to § 1192 of the Bankruptcy Code. However, the rights and treatment of the IRS and obligations and liability of Debtor or its property regarding any claim of the IRS against Debtor which was assessable or due and payable prior to the Filing Date or treated as arising prior to the Filing Date pursuant to 11 U.S.C. §502(i) shall be treated and fixed in accordance with the Plan, and any additional, other or amended claims assessable or due and payable prior to the Filing Date and not timely asserted or amended by the IRS in accordance with the Bankruptcy Code and the Plan and in all instances prior to entry of the Confirmation Order, shall be forever barred. Debtor reserves the right to pay any tax claim in full at any time. The Claim of the Class 1 Creditor is Impaired by the Plan and the holder of the Class 1 Claim is entitled to vote to accept or reject the Plan. Nothing herein shall constitute an admission as to the nature, validity, or amount of such claim. Debtor reserves the right to object to any and all claims.

4.2 *Class 2: Secured or Priority Tax Claim of the Georgia Department of Revenue:* Class 2 shall consist of any Secured Claim or Priority Tax Claim held by the Georgia Department of Revenue (the “GDR”) which was assessable or due and payable prior to the Filing Date or treated as arising prior to the Filing Date pursuant to 11 U.S.C. §502(i) (the “Class 2 GDR Tax Claim”). Debtor is not aware of any claim filed by the GDR nor has it scheduled any amount due and owing to the GDR. Any Class 2 GDR Tax Claim (or as otherwise allowed by the Court) shall be paid pursuant to Class 2, and any GDR general unsecured tax claim is specifically classified and will be paid pursuant to the General Unsecured Class 7 or 8. Debtor shall pay the Allowed Class 2 GDR Tax Claim in equal monthly payments commencing on the 28th day of the first full month following the Effective Date and continuing by the 28th day of each subsequent month (or the next Business Day if the 28th day is not a business day). Interest shall accrue on the principal amount due from the Effective Date at the annual rate of the prime rate as published by the Wall Street Journal on the Effective Date plus three (3) percent per annum or such lesser rate as (i) agreed to by the GDR or (ii) indicated on the applicable GDR proof of claim. Notwithstanding anything to the contrary herein, Debtor shall pay the balance of the Allowed Class 2 GDR Tax Claim with a balloon payment on the 5-year anniversary of the Filing Date (i.e. March 2, 2025) unless the GDR agrees to a longer payment term, which such agreement may be communicated by the GDR continuing to accept monthly payments after March 2, 2025. Any third-party payments or payments in excess of the scheduled distribution pursuant to Class 2 received by the Georgia Department of Revenue shall be applied to the principal tax obligation of the Class 2 GDR Tax Claim owed by Debtor pursuant to Class 2. Debtor’s Class 2 payments shall be applied in the following order: (i) interest accruing on the Class 2 GDR Tax Claim after the Effective Date under the Plan, (ii) the taxes included in the Class 2 GDR Tax Claim and (iii) interest and penalties which accrued prior to the Filing Date and Effective Date. The Court established a Bar Date for filing proofs of claim. Upon the passage the Bar Date, any claim asserted or assertable by the GDR on or before the Filing Date or treated as arising prior to the Filing Date pursuant to 11 U.S.C. §502(i) shall: (i) be time barred and fixed as provided in the Plan, subject to Debtor’s right to object to the same and (ii) any other, additional or amended claim assessable on or prior to the Filing Date shall be disallowed in its entirety and forever discharged. Debtor shall pay any claim of the GDR assessable, arising prior to the Filing Date or treated as arising prior to the Filing Date pursuant to 11 U.S.C. §502(i) on the terms herein, and the GDR shall be permanently enjoined from seeking payment in excess of the amounts provided for in the Plan for such claims. A failure by the Debtor to make a payment on the Class 2 GDR Tax Claim to the GDR pursuant to the terms of the Plan shall be an event of default as to the GDR. In the event of a default under Class 2, the GDR must send a Default Notice to Debtor in accordance with Article 2.3 of the Plan. Such Default Notice must contain the reason for the default and if such default is monetary, the amount of the default and amount necessary to cure the default and the address for payment, which will accept overnight deliveries. Receipt by Debtor’s Attorney shall not be deemed receipt by Debtor of the required Default Notice. In the event of an uncured default following proper Default Notice procedures and opportunity to cure pursuant to Article 2.3 of the Plan, the GDR may: (a) enforce the entire amount of its then outstanding Allowed Class 2 GDR Tax Claim; (b) exercise any and all rights and remedies it may have under applicable nonbankruptcy law regarding the Allowed Class 2 GDR Tax Claim; and (c) seek such relief as may be appropriate in the Bankruptcy Court. The amount of any claim of the GDR that is not otherwise assessable or due and payable on or prior to the Filing Date or treated as arising prior to the Filing Date pursuant to 11 U.S.C.

§502(i) shall, and the right of the GDR, if any, to payment in respect thereto shall (i) be determined in the manner in which the amount of such Claim and the rights of the GDR would have been resolved or adjudicated if the Bankruptcy Case had not been commenced, (ii) survive after the Effective Date as if the Bankruptcy Case had not been commenced, and (iii) not be discharged pursuant to § 1192 of the Bankruptcy Code. However, the rights and treatment of the GDR and obligations and liability of Debtor or its property regarding any claim of the GDR against Debtor which was assessable or due and payable prior to the Filing Date or treated as arising prior to the Filing Date pursuant to 11 U.S.C. §502(i) shall be treated and fixed in accordance with the Plan, and any additional, other or amended claims assessable or due and payable prior to the Filing Date and not timely asserted or amended by the GDR in accordance with the Bankruptcy Code and the Plan and in all instances prior to entry of the Confirmation Order, shall be forever barred. Debtor reserves the right to pay any tax claim in full at any time. The Claim of the Class 2 Creditor is Impaired by the Plan and the holder of the Class 2 Claim is entitled to vote to accept or reject the Plan. Nothing herein shall constitute an admission as to the nature, validity, or amount of such claim. Debtor reserves the right to object to any and all claims.

4.3 *Class 3: Secured or Priority Tax of DeKalb County, Georgia Tax Commissioner:* Class 3 shall consist of any Secured Claim or Priority Tax Claim held by the DeKalb County Tax Commissioner (“DeKalb County”) which was assessable or due and payable prior to the Filing Date or treated as arising prior to the Filing Date pursuant to 11 U.S.C. §502(i) (the “DeKalb County Tax Claim”). Debtor has scheduled \$1,084.87 due and owing to DeKalb County; the County filed claim no. 1 in the amount of \$1,139.11. Any Class 3 DeKalb County Tax Claim (or as otherwise allowed by the Court) shall be paid pursuant to Class 3, in equal monthly payments, commencing on the 28th day of the first full month following the Effective Date and continuing by the 28th day of each subsequent month (or the next Business Day if the 28th day is not a business day). Interest shall accrue on the principal amount due from the Effective Date at the annual rate of the prime rate as published by the Wall Street Journal on the Effective Date plus three (3) percent per annum or such lesser rate as agreed to by DeKalb County. Notwithstanding anything to the contrary herein, Debtor shall pay the balance of the Allowed Class 3 DeKalb County Tax Claim, if any, with a balloon payment on the 5-year anniversary of the Filing Date unless DeKalb County agrees to a longer payment term, which such agreement may be communicated by DeKalb County continuing to accept monthly payments after the five-year anniversary of the Filing Date. Any third-party payments or payments in excess of the scheduled distribution pursuant to Class 3 received by DeKalb County shall be applied to the principal tax obligation owed by Debtor pursuant to Class 3. A failure by the Debtor to make a payment under Class 3 to DeKalb County pursuant to the terms of the Plan shall be an event of default as to the Class 3 DeKalb County Tax Claim. In the event of a default under Class 3, DeKalb County must send a Default Notice to Debtor in accordance with Article 2.3 of the Plan. Such Default Notice must contain the reason for the default, and if such default is monetary, the amount of the default and amount necessary to cure the default and the address for payment, which will accept overnight deliveries. Receipt by Debtor’s Attorney shall not be deemed receipt by Debtor of the required Default Notice. In the event of an uncured default following proper Default Notice procedures and opportunity to cure pursuant to Article 2.3 of the Plan, DeKalb County may (a) enforce the entire amount of its then outstanding Allowed Class 3 DeKalb County Tax Claim; (b) exercise any and all rights and remedies it may have under applicable non-bankruptcy law regarding the Allowed Class 3, DeKalb County Tax Claim and (c) seek such relief as may be



appropriate in the Bankruptcy Court. The amount of any claim of DeKalb County that is not otherwise assessable or due and payable on or prior to the Effective Date, and the right of DeKalb County, if any, to payment in respect thereto shall (i) be determined in the manner in which the amount of such Claim and the rights DeKalb County would have been resolved or adjudicated if the Bankruptcy Case had not been commenced, (ii) survive after the Effective Date as if the Bankruptcy Case had not been commenced, and (iii) not be discharged pursuant to § 1192 of the Bankruptcy Code. However, the rights and treatment of DeKalb County and obligations and liability of Debtor or its property regarding any claim of DeKalb County against Debtor which was assessable or due and payable prior to the Effective Date shall be treated and fixed in accordance with the Plan, and any additional, other or amended claims assessable or due and payable prior to the Effective Date and not timely asserted or amended by the DeKalb County in accordance with the Bankruptcy Code and the Plan and in all instances prior to entry of the Confirmation Order, shall be forever barred. Debtor reserves the right to pay any tax claim in full at any time. Debtor shall pay the post-petition taxes due to DeKalb County when due. The Claim of the Class 3 Creditor is Impaired by the Plan and the holder of the Class 3 Claim is entitled to vote to accept or reject the Plan. Nothing herein shall constitute an admission as to the nature, validity, or amount of such claim. Debtor reserves the right to object to any and all claims.

4.4 *Class 4: Priority or Secured Tax Claims of Governmental Units Not Otherwise Classified:* Class 4 shall consist of any Priority or Secured Claim of a governmental unit entitled to priority under 11 U.S.C. §507(a)(8), which are not otherwise specifically classified in the Plan (“Class 4 Governmental Unit Claim”). The amount of any claim of a Governmental Unit that is not assessed or assessable on or prior to the Effective Date, and the right of the particular governmental unit, if any, to payment in respect thereto shall (i) be determined in the manner in which the amount of such Claim and the rights of the particular governmental unit would have been resolved or adjudicated if the Bankruptcy Case had not been commenced, (ii) survive after the Effective Date as if the Bankruptcy Case had not been commenced, and (iii) not be discharged pursuant to § 1141 of the Bankruptcy Code if applicable. Debtor is not aware of any Holders of Class 4 Governmental Unit Claims not otherwise classified in the Plan. In the event there are Allowed Holders of Class 4 Governmental Unit Priority Tax Claims, Debtor shall pay such Allowed Class 4 Government Unit Priority Tax Claims at the rate of \$100 per month commencing on the 28th day of the first full month following the Effective Date and continuing by the 28th day of each subsequent month (or the next Business Day if the 28th day is not a Business Day), with interest accruing at the annual rate of 5.5% or at the rate otherwise as required by the Bankruptcy Code, with a final balloon payment on the 5th anniversary of the Filing Date unless such Holder agrees to a longer payment term, which such agreement may be communicated by the Holder continuing to accept monthly payments after the fifth anniversary of the Filing Date. Debtor reserves the right to pay any Class 4 Governmental Unit Claim in full at any time. A failure by the Debtor to make a payment under Class 4 to the Holder of a Class 4 Governmental Unit Tax Claim pursuant to the terms of the Plan shall be an event of default as to such Governmental Unit. In the event of a default under Class 4, the Holder of a Class 4 Governmental Unit Tax Claim must send a Default Notice to Debtor in accordance with Article 2.3 of the Plan. Such Default Notice must contain the reason for the default and if such default is monetary, the amount of the default and amount necessary to cure the default and the address for payment, which will accept overnight deliveries. Receipt by Debtor’s Attorney shall not be deemed receipt by Debtor of the required Default Notice. In the event of an uncured default following proper Default Notice



procedures and opportunity to cure pursuant to Article 2.3 of the Plan, the Holder of a Class 4 Governmental Unit Tax Claim may (a) enforce the entire amount of its then outstanding Allowed Class 4 Governmental Unit Tax Claim; (b) exercise any and all rights and remedies it may have under applicable non-bankruptcy law regarding the Allowed Class Governmental Unit Tax Claim; and (c) seek such relief as may be appropriate in the Bankruptcy Court. The Claims of the Class 4 Creditors are Impaired by the Plan and the holder of the Class 4 Claim is entitled to vote to accept or reject the Plan. Nothing herein shall constitute an admission as to the nature, validity, or amount of such claim. Debtor reserves the right to object to any and all claims.

4.5 *Class 5: Executory Contract Claims:* Class 5 shall consist of any Claims against Debtor held by holders of executory contracts under certain lease agreements and pending contracts (collectively, the “Executory Contracts”). Debtor shall assume the Executory Contracts upon Confirmation of this Plan unless otherwise rejected by Order of the Court. Debtor reserves the right to reject any contract as it deems necessary. Damage claims for rejection of such contract shall be a Class 7 or 8 claim. The Claims in Class 5 are not impaired and are not entitled to vote to accept or reject the Plan pursuant to Class 5. The Class 5 Claims will be paid according to their individual terms. A failure by the Debtor to make a payment under Class 5 to a Class 5 Creditor pursuant to the terms of the Plan shall be an event of default as to the Class 5 Claim. In the event of a default under Class 5, a Class 5 Creditor must send a Default Notice to Debtor in accordance with Article 2.3 of the Plan. Such Default Notice must contain the reason for the default and if such default is monetary, the amount of the default and amount necessary to cure the default and the address for payment, which will accept overnight deliveries. Receipt by Debtor’s Attorney shall not be deemed receipt by Debtor of the required Default Notice. In the event of an uncured default following proper Default Notice procedures and opportunity to cure pursuant to Article 2.3 of the Plan, a Class 5 Creditor may (a) enforce the entire amount of its then outstanding Allowed Class 5 Claim; (b) exercise any and all rights and remedies it may have under applicable nonbankruptcy law regarding the Allowed Class 5 Claim; and (c) seek such relief as may be appropriate in the Bankruptcy Court. Debtor reserves the right to pay any claim in full at any time. Nothing herein shall constitute an admission as to the nature, validity, or amount of such claim. Debtor reserves the right to object to any and all claims.

Debtor is seeking to assume the following contracts.

CREDITOR	
Selective Insurance	Property Insurance
Amerisure Mutual Ins. Co.	Workers Compensation Insurance
Nationwide	General Liability Insurance, Property Insurance, Auto Insurance and Umbrella Insurance
CareServ	Computer Services
Wells Fargo Financial Leasing, Inc.	Equipment lease (claim no 6)
Pitney Bowes	Postage Meter
Atlanta Office Technologies	Printer Lease
Salon PS Georgia LLC	Hair Salon

Genuine Products Laundry Services & Equipment	Laundry Services
Paylocity	Payroll Processing
Gas South	Utility
Gibbs Landscaping	Landscaping and Lawn Services
Thyssen Krupp Elevator	Elevator Maintenance
Fortner Communications, Inc	Security and Fire Safety Systems
Guardian Pharmacy, LLC	Pharmaceutical Services
QuickBooks Online	Accounting programing

4.6 *Class 6: Secured Claim of Paul McGough:* Creditor Paul McGough (“McGough”) filed a secured proof of claim, claim No. 7, in the amount of \$4,651,694.99. McGough recorded and filed a certain Restated Assignment of Leases and Rents, in the land records of DeKalb County, Georgia in deed book 24742, commencing on page 745.<sup>3</sup> McGough shall have an Allowed Secured Claim in the principal amount of \$2,325,000, secured by the *Collateral Assignment of Lease or Leases and Rents*, as the same has been amended, restated, and modified. Debtor shall pay the Allowed Class 6 Secured Claim of \$2,325,000.00 in monthly payments set forth below in full and complete satisfaction of the outstanding debt to the Class 6 claimant, commencing on the Effective Date, and continuing on the 28th day of each subsequent month (or the next Business Day if the 28th day is not a business day) following the Effective Date. Interest shall accrue at the rate of 3.25% such that at the end of all payments the Class 6 creditor shall have received \$3,557,812.20. Upon receipt of these payments, in year 23, the debt will be considered paid in full and no further amount will be due and owing. Each party and his, her, its successors and assigns, hereby expressly and fully releases the other party and his, her, or its assigns, from any and all obligations due to the other not otherwise set forth herein. McGough shall retain his Lien on Class 6 collateral. McGough’s rights under the *Collateral Assignment of Lease or Leases and Rents*, as the same has been amended, restated, and modified, are hereby extended through the date payments are completed under the Plan. McGough shall be entitled to take whatever steps he deems necessary to provide notice of his claim until that time and upon full payment of the debt as set forth herein. At that time, any and all such Liens will be marked satisfied and released. Class 6 is impaired and is entitled to vote on the Plan. The payment schedule beginning on January 28, 2023, is as follows:

Monthly Payment Years 1-5	\$ 6,296.87
Monthly Payment Years 6-7	\$ 10,000.00
Monthly Payment Years 8-23.3	\$ 15,000.00

A failure by the Debtor to make a payment on the Class 6 Claim pursuant to the terms of the Plan shall be an event of default as to McGough. In the event of a default under Class 6, McGough must send a Default Notice to Debtor in accordance with Article 2.3 of the Plan. Such Default Notice must contain the reason for the default, the amount of the default and amount necessary to cure the default and the address for payment, which will accept overnight deliveries. Receipt by Debtor’s Attorney shall not be deemed receipt by Debtor of the

<sup>3</sup> Debtor asserts that Paul McGough’s collateral is not leases and rents under Georgia law, which McGough disputes. The settlement between McGough and Debtor incorporated into this Plan negates any need to have the issue determined by the Court.

required Default Notice. In the event of two, consecutive, uncured defaults, following proper Default Notice procedures and opportunity to cure pursuant to Article 2.3 of the Plan, McGough may (i) exercise all rights and remedies available under his *Collateral Assignment of Lease or Leases and Rents*, as the same has been amended, restated, and modified, including the appointment of a receiver in the Superior Court of DeKalb County, (ii) seek such relief as may be appropriate in the Bankruptcy Court, or (iii) seek appointment (with Bankruptcy Court approval or consent of Debtor) of a Chief Restructuring Officer, Turnaround Specialist, or similar professional to exercise control and oversight over the operations, revenue, and expenses of the Montclair, and the Association shall cooperate and provide such access and financial information with respect to the Montclair as required by such professional. Upon the second consecutive, uncured, default, McGough shall be entitled to add 5% to the then outstanding Allowed Class 6 Claim. The Sections 7.3 and 14.11 reservations of rights by Debtor shall not apply to any Cause of Action existing by and between McGough and Debtor as of the time that the Chapter 11 case was filed. The rights of Debtor and McGough are expressly governed by the terms of Settlement Agreement, as the same has been modified by this Chapter 11 Plan, generally, and the terms of section 4.6 specifically. McGough shall file an appropriate pleading with the court specifically setting forth the address where payments shall be sent on or before the Effective Date.

4.7 *Class 7: General Unsecured Claims:* Class 7 consists of the remaining General Unsecured Claims, not in Class 8. Debtor shall pay Holders of Allowed General Unsecured Claims, in the amount of \$58,722.41 on a pro-rata basis, their Total Class 7 Distribution based on such Holder's Allowed Class 7 Claim as compared to the total of all Allowed Class 7 Claims. Debtor shall pay such Class 7 Total Distribution in monthly payments of varying amounts commencing on the 10th day of the month one year following the Effective Date (Class 7 Distribution 1) and continuing each month thereafter for forty-eight months, representing a distribution of Debtor's monthly net income based on its attached projected budget.

CREDITOR	ESTIMATED CLAIM	Actual Claim
Athena Farms	\$8,667.44	none
Sysco Food Services of Atlanta	\$55,884.19	58,722.41
Valex Service Group	\$19,641.50	none
Total:	\$ 84,193.13	\$58,722.41

Debtor's Total Class 7 Distributions equal the Debtor's projected disposable income after payment of certain Allowed Administrative Expenses, as reflected in Debtor's budget attached to the Plan as Exhibit "A." Notwithstanding anything else in this document to the contrary, any claim listed above shall be reduced by any payments received by the creditor holding such claim. The Claims of the Class 7 Creditors are Impaired by the Plan and the holders of Class 7 Claims are entitled to vote to accept or reject the Plan. Nothing herein shall constitute an admission as to the nature, validity, or amount of such claim. Debtor reserves the right to object to any and all claims. To the extent any Class 7 Creditor properly asserts an administrative expense priority claim pursuant to §6.4 and is treated as such for the provision of goods and services to the Debtor within 20 days of the filing, such claim will be paid as such pursuant to §6.3.

4.8 *Class 8: General Unsecured Claim which fall into a class of claims for convenience, defined as those under \$7,500.00.* Class 8 consists of general unsecured claims due and owing in an amount under \$7,500.00, which may be paid at any time by Debtor, at Debtor's convenience and in its sole discretion, in their full amount. The Claims of the Class 8 Creditors are Impaired by the Plan and the holders of Class 8 Claims are entitled to vote to accept or reject the Plan. Nothing herein shall constitute an admission as to the nature, validity, or amount of such claim. Debtor reserves the right to object to any and all claims. Class 8 payments will be paid in full in Years two through five of the Plan. These claims total \$6,181.06. These claims represent businesses and individuals receiving no payment for the provision of goods and services rendered to the Debtor.

<b>CREDITOR</b>	<b>ESTIMATED CLAIM</b>	<b>Actual Claim</b>
Berke Products	\$489.32	none
Burnum LLC	\$225.00	none
Class Act, Inc.	\$300.00	none
Clipboard Health, dba Twomagnets, Inc.	\$2,100.60	none
Comcast Business	\$1,043.16	none
Cortes, LLC	\$1,823.96	none
DeKalb County Sanitation	\$1,890.48	none
Ecolab	\$929.23	none
Fortner Communications, Inc.	\$2,222.74	none
Gibbs Landscaping	\$425.00	none
Grainger	\$1,607.14	1,607.14
Hershey's Ice Cream	\$753.60	none
J&C Electric	\$1,247.00	none
Jeff S. Henderson Painting	\$1,637.50	none
Leonard Blount	\$50.00	none
Marshall Jones	\$2,430.40	none
Nationwide	\$74.57	none
Office Depot	\$101.92	none
Occupied Renovations	\$4,840.44	none
Peachtree Immediate Care	\$660.00	none
Peachtree Immediate Care	\$215.00	none
SunTrust Bank Card One	\$6,000.00	none
S&W Towing	\$285.00	none
PSI	\$4,603.92	4,573.92
Society for Human Resource Mgmt	\$2,190.00	none
Terry Ferris	\$2,535.60	none
Tom Johnson	100.00	none
Tom Wolf	\$70.00	none
Total:	\$16,659.52	6,181.06

To the extent any Class 8 Creditor properly asserts an administrative expense priority claim pursuant to §6.4 and is treated as such for the provision of goods and services to the Debtor within 20 days of the filing, such claim will be paid as such pursuant to §6.3.

4.9 *Class 9: Interest Claims:* Class 9 consists of the Interest Claims, that being the condominium unit owners who own fractional interests (in undivided interests) in the Debtor as set forth in the Declaration. Class 9 shall retain their undivided ownership interests in Debtor. The Claims in Class 9 are not impaired and are not entitled to vote to accept or reject the Plan pursuant to Class 9.

## **Article 5**

### **Subchapter V Trustee and Patient Ombudsman**

5.1 *Subchapter V Trustee.* The Subchapter V Trustee was appointed by the United States Trustee in this case to perform the duties described in § 1183(b) of the Bankruptcy Code, one of which is to facilitate the development of a consensual plan of reorganization.

5.2 *Termination of the Subchapter V Trustee's Services.* The services of the Subchapter V Trustee shall terminate upon "substantial consummation" of the Plan, as defined in § 1101(2) of the Bankruptcy Code. Debtor shall directly make all payments required under this Plan, including the first payments required for substantial consummation of the Plan.

5.3 *Compensation of the Subchapter V Trustee.* The Subchapter V Trustee shall be entitled to apply for reasonable compensation for the Subchapter V Trustee's fees and expenses under 11 U.S.C. §§ 330 and 503(b)(3). Debtor shall pay all compensation awarded the Subchapter V Trustee latest of: (i) the Effective Date, (ii) the first day of the first month after the Court awards any fee to the Trustee, (iii) upon such other terms as may be agreed upon by the Trustee and Debtor in writing.

5.4 *Health Care Designation and Patient Care Ombudsman.* On November 19, 2021, the Office of the U.S. Trustee moved to designate Debtor as a "health care business" pursuant to Fed.R.Bankr.P. 1021 and for the Court to enter an Order appointing a patient care ombudsman pursuant to 11 U.S.C. §333(a)(1) and Fed.R.Bankr.P. 2007.2(b) [Doc. No. 55]. The Debtor expressed no opposition to this request. The fees to be paid to the appointed Ombudsman and any other expenses shall be paid on application and approval, and in conjunction with the fees paid to the Subchapter V Trustee.

5.5 *Termination of the Patient Care Ombudsman.* The services of the Patient Care Ombudsman shall terminate on the Effective Date of the Plan.

## **Article 6**

### **Treatment of Unclassified Claims**

6.1 *Summary.* Pursuant to § 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims against Debtor are not classified for purposes of voting on, or receiving Distributions under the Plan. Holders of such Claims are not entitled to vote on the Plan. All such Claims, other than that of the Subchapter V Trustee, as addressed above, are instead treated separately in accordance with Article 6 of the Plan and in accordance with the requirements set forth in § 1129(a)(9)(A) and 1191(e) of the Bankruptcy Code, as applicable.

6.2 Administrative Expense Claims held by Professionals Entitled to Priority.

6.2.1. Debtor, pursuant to Court order, has retained the law firm of Steinfeld & Steinfeld, PC. ("Firm") to serve as Debtor's bankruptcy counsel. As set forth in the employment application and supporting documents, the Firm received a prepetition retainer and was paid for fees earned prior to the filing date, in the amount of \$37,637.19. including the filing fee. The Firm has been awarded fees on two fee applications and these fees total \$131,180.53. A third fee application will be filed by the Firm to be heard in conjunction with confirmation in the approximate amount of \$55,000.00 and additional fees will come due in order to conclude the case.

6.2.2. Debtor, pursuant to Court order, has retained Winter Capriola Zenner LLC as Special Counsel ("Special Counsel") for litigation and condominium law issues. As set forth in the employment application and supporting documents, Special Counsel was paid a retainer for services for calendar year 2021 in the amount of \$1,200.00. This is a recurring fee and will come due again in each subsequent calendar year. Special counsel filed an application for fees during the course of the case, which was approved, in the amount of \$51,002.50. A fee application for fees since this approved application will be filed and heard in conjunction with confirmation.

6.2.3. Debtor, pursuant to Court order, has retained Marshall Jones as its CPA ("CPA") in this case. CPA was paid for prepetition services. As set forth in its Application for employment, it is owed \$2,430.40 for prepetition services and will be paid pursuant to appropriate application to the court for post-petition services at the rate of approximately \$5,000 per month, which includes its fees for assistance with accounts payable but does not include tax filings, which is additional. CPA has been assisting Debtor with its monthly operating reports. Its first application for fees was approved in the amount of \$32,233.84. A fee application for fees since this approved application will be filed and heard in conjunction with confirmation.

6.2.4. Debtor, pursuant to Court order, may retain other Counsel, Experts and Professionals as necessitated by due diligence and good governance for Associations. Said Counsel will have been approved by Court Order and its fees and retainers will have been approved by the Court. To this end, Debtor retained Adams Capital Valuation Services ("Adams Capital") and this retention was approved by the Court in order for Mr. David Adams to assist Debtor in valuing the Montclair as an economic entity. An application to pay Adams Capital is pending in the amount of \$72,907.06.

6.2.5. Debtor obtained permission from the Court to set up and fund an escrow account for the payment of allowed Administrative Expense Claims. [Doc. No. 173]. This account is being funded voluntarily by owners of condominiums who can best afford to fund these expenses and it is being held in the Steinfeld & Steinfeld, PC attorney's IOLTA trust account and is being disbursed with entered orders of the Court on administrative expense claims. It is not necessarily sufficient to cover all administrative expense claims. As of the time that this Amended Plan is being filed, the Escrow Account has a balance in the amount of \$45,492.44. The escrow fund has funded attorney's fees for the Subchapter V Trustee, special counsel and the Firm.

6.2.6. Debtor shall pay any unpaid allowed Administrative Expense Claim held by the Firm, Special Counsel and CPA, and any other approved professional fees



(hereinafter, collectively “the Professionals”) on the Effective Date unless otherwise agreed to by the Professionals. The Professionals shall retain their security interest in any pre-petition retainers. Debtor is paying post-petition bills and does not expect any claims for unpaid post-petition goods and services other than possible fees to Professionals.

6.3 *Administrative Expense Priority Claims.* Subject to the provisions of §§ 328, 330(a) and 331 of the Bankruptcy Code, each holder of an Allowed Administrative Expense Claim which is not otherwise provided for under the Plan will be paid the full unpaid amount of such Allowed Administrative Expense Claim in Cash on the latest of (1) the Effective Date, (ii) as soon as practicable after the date on which such Claim becomes an Allowed Administrative Expense Claim, (iii) upon such other terms as may be agreed upon by such holder and Debtor, or (iv) as otherwise ordered by the Bankruptcy Court. If the Plan is confirmed under § 1191(b) of the Bankruptcy Code, Debtor may elect to pay any Allowed Administrative Expenses Claim in equal monthly payments over the period (a) starting on the first day of the month immediately following the month in which the order on the application by the holder of an Allowed Administrative Expenses Claim for compensation became a Final Order and (b) ending on the first day of the thirty-sixth month following the Effective Date. Notwithstanding the foregoing, Allowed Administrative Expense Claims representing obligations incurred by Debtor in the ordinary course of business after the Filing Date, including any tax obligations arising after the Effective Date, will be paid or performed by Debtor when due in accordance with the terms and conditions of the particular agreements or non-bankruptcy law governing such obligations.

6.4 *Proof of Claim for an Administrative Expense Claim.* Except as otherwise provided in this Plan, any Person holding an Administrative Expense Claim, other than an Administrative Expense Claim arising from the operation by Debtor of its business in the ordinary course of business, shall file an application for allowance and award of such Administrative Expense Claim with the Bankruptcy Court within thirty (30) days after the Confirmation Date. At the same time any Person files an Administrative Expense Claim, such Person shall also serve a copy of the Administrative Expense Claim upon counsel for Debtor. Any Person who fails to timely file and serve a proof of such Administrative Expense Claim shall be forever barred from seeking payment of such Administrative Expense Claims by Debtor or the Estate.

6.5 *Professional Fees.* Any Person seeking an award by the Bankruptcy Court of Professional Compensation shall file a final application with the Bankruptcy Court for allowance of Professional Compensation for services rendered and reimbursement of expenses incurred through the Effective Date within sixty (60) days after the Confirmation Date or by such other deadline as may be fixed by the Bankruptcy Court.

6.6 *Post-Confirmation Professional Fees.* Debtor may pay professional fees incurred after confirmation of the Plan without Court approval in the ordinary course of its business.

6.7 *Insurance.* The Court approved Debtor’s motion to pay pre-petition and ongoing Insurance premiums by Order entered November 18, 2021 [Doc. No. 49]. Accordingly,

the pre-petition claims held by Aetna and Amerisure Mutual Insurance Co, will be paid in the amount of \$30,876.50 in a timely and on an ongoing basis and will also include payment of claim no. 5 in the amount of \$352.72 if still claimed as due and owing.

## **Article 7**

### **Means for the Implementation of the Plan**

7.1 *Parties Responsible for Implementation of the Plan.* Upon confirmation, Debtor will be charged with administration of the Case. Debtor will be authorized and empowered to take such actions as are required to effectuate the Plan. Debtor will file all post-confirmation reports required by the United States Trustee's office. Because this is a Subchapter V case, no such reports are required. Debtor will also file the necessary final reports and may apply for a final decree after substantial consummation and the completion of the claims' analysis and objection process and at such time as Debtor deems appropriate unless otherwise required by the Bankruptcy Court. No other reports shall be required. Debtor shall be authorized to reopen this case after the entry of a Final Decree to enforce the terms of the Plan including for the purpose of seeking to hold a party in contempt or to enforce the confirmation or discharge injunction or otherwise afford relief to Debtor.

#### *7.2 Sources of Cash for Distribution.*

7.2.1 The source of funds for the payments pursuant to the Plan is the continued operation of the Business.

7.2.2 A copy of Debtor's post-Confirmation yearly projections for the years 2023 – 2027 is set forth on Exhibit "A" to this Plan. Debtor's projections are based on Debtor's previous business operations and projected future business forecasts and includes anticipated increases in Montclair revenue and in annual assessments from Owners in the 1800 Building. Debtor's Board of Directors and Executive Director are able to reasonably project income and expenses based on such information.

7.2.3 Debtor may maintain bank accounts under the confirmed Plan in the ordinary course of business. Debtor may also pay ordinary and necessary expenses of administration of the Plan in due course.

7.3 *Preservation of Causes of Action.* In accordance with § 1123(b)(3) of the Bankruptcy Code, Debtor will retain and may (but is not required to) enforce all Retained Actions. After the Effective Date, Debtor, in its sole and absolute discretion, shall have the right to bring, settle, release, compromise, or enforce such Retained Actions (or decline to do any of the foregoing), without further approval of the Bankruptcy Court. Debtor (or any successors, in the exercise of their sole discretion), may pursue such Retained Actions so long as it is the best interests of Debtor (or any successors holding such rights of action). The failure of Debtor to specifically list any claim, right of action, suit, proceeding or other Retained Action in this Plan does not, and will not be deemed to, constitute a waiver or release by Debtor of such claim, right of action, suit, proceeding or other Retained Action, and Debtor will retain the right to pursue such claims, rights of action, suits, proceedings and other Retained Actions in its sole discretion.

Therefore, no preclusion doctrine, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches will apply to such claim, right of action, suit, proceeding or other Retained Actions upon or after the confirmation or consummation of this Plan. Debtor reserves all causes of actions for breach of any former or now existing agreement or otherwise. Debtor specifically reserves any cause of action against any of Debtor's account debtors related to underpayment or non-payment of any fees, or other monies or receivables due. The Plan shall not be deemed a waiver of any right of Debtor to collect any receivable or right to payment under any applicable laws. Debtor expressly reserves the right to exercise any and all remedies available to Debtor regarding its accounts receivable or rights to payment at law or in equity, at such time or times as Debtor from time to time may elect. This Plan is filed with a full reservation of rights. Any failure by Debtor to assert or set forth the occurrence of any other default or events of default which may have occurred shall not be deemed to be a waiver, release or estoppel of such other default or event of default. Debtor hereby expressly reserves the right to declare any such other default or event of default and to take such other action as Debtor may be entitled to applicable law. No delay on the part of Debtor in exercising any right or remedy shall operate as a waiver in whole or in part of any right or remedy. This Plan is filed with a full reservation of rights.

7.4 *Effectuating Documents, Further Transactions.* Debtor is authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such action as may be necessary, desirable or appropriate to effectuate and further evidence the terms and conditions of this Plan or to otherwise comply with applicable law.

7.5 *Exemption from Certain Transfer Taxes and Recording Fees.* Pursuant to 11 U.S.C. § 1146(a), O.C.G.A. §48-6-65(a)(2), Ga. Comp. R. & Regs. R. 560-11-8.14 and any other applicable laws, codes or regulations, any transfers from Debtor to any other Person or entity pursuant to or in contemplation of this Plan, or any agreement regarding the transfer of title to or ownership of any of Debtor's real or personal property will not be subject to any document recording tax, stamp tax, conveyance fee, sales tax, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment. Without limitation of the foregoing, the Confirmation Order may direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

7.6 *Further Authorization.* Debtor shall be entitled to seek such orders, judgments, injunctions and rulings as it deems necessary or desirable to carry out the intentions and purposes, and to give full effect to the provisions, of this Plan.

7.7 *Liabilities of Debtor.* Debtor will not have any liabilities except those expressly stated or assumed under the Plan. Debtor will be responsible for all expenses incurred by Debtor in the ordinary course of business after the Filing Date, and those expenses will be paid in the ordinary course of business as they become due or as agreed upon by holders of the expense claim.

## Article 8

## **Distributions**

8.1 *Disbursing Agent.* Unless otherwise provided for herein, all Distributions under this Plan shall be made by Debtor or its agent.

8.2 *Distributions of Cash.* Any Distribution of Cash made by Debtor pursuant to this Plan shall, at Debtor's option, be made by check drawn on a domestic bank or by wire transfer from a domestic bank or in any other form of cash or cash equivalent.

8.3 *No Interest on Claims or Interests.* Unless otherwise specifically provided for in this Plan, the Confirmation Order, or a postpetition agreement in writing between the Debtor and a Holder, postpetition interest shall not accrue or be paid on Claims, and no Holder shall be entitled to interest accruing on or after the Filing Date on any Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Effective Date to the date a final determination is made when and if such Disputed Claim becomes an Allowed Claim.

8.4 *Delivery of Distributions.* The Distribution to a Holder of an Allowed Claim shall be made by Debtor or the Subchapter V Trustee (as applicable) (a) at the address set forth on the proof of claim filed by such Holder, (b) at the address set forth in any written notices of address change delivered to Debtor after the date of any related proof of claim, (c) at the addresses reflected in the Schedules if no proof of claim has been filed and Debtor has not received a written notice of a change of address, or (d) if the Holder's address is not listed in the Schedules, at the last known address of such Holder according to the Debtor's books and records. If any Holder's Distribution is returned as undeliverable, no further Distributions to such Holder shall be made unless and until Debtor or Subchapter V Trustee (as applicable) is notified by such Holder in writing of such Holder's then-current address, at which time Debtor or Subchapter V Trustee (as applicable) shall recommence Distributions to such Holder without interest but further provided that (i) any distributions not claimed within 6 months of return shall be irrevocably retained by Debtor and (ii) such Holder shall waive its right to such Distributions. All Distributions returned to Debtor or Subchapter V Trustee (as applicable) and not claimed within six (6) months of return shall be irrevocably retained by Debtor notwithstanding any federal or state escheat laws to the contrary. If any Distribution on an Unsecured Claim ("Unsecured Distribution") is tendered by Debtor or the Subchapter V Trustee (as applicable) to a Holder of an Unsecured Claim and returned, refused or otherwise improperly returned ("Unsecured Distribution Refusal"), Debtor or the Subchapter V Trustee (as applicable) shall not be responsible for making any further Unsecured Distribution on account of such Unsecured Claim. Accordingly, in the event of an Unsecured Distribution Refusal, Debtor or the Subchapter V Trustee (as applicable) shall be relieved of any obligation to make said payment or Distribution and Debtor or the Subchapter V Trustee (as applicable) is relieved of any obligation to make further payments or Distributions on such Unsecured Claim under the Plan. If any Distribution on a Secured Claim or Priority Claim ("Secured or Priority Distribution") is tendered by Debtor or the Subchapter V Trustee (as applicable) to a Holder of a Secured Claim or Priority Claim and returned, refused or otherwise improperly returned ("Secured or Priority Distribution Refusal"), the Holder of such Secured Claim or Priority Claim, as applicable, shall be deemed to have waived its right to such tendered payment or Distribution and such tendered payment or Distribution shall be deemed satisfied. In

the event of a Secured or Priority Distribution Refusal, any obligation of Debtor or the Subchapter V Trustee (as applicable) to make any additional or further payment on such Secured Claim or Priority Claim shall be tolled until such time as: (i) notice is provided to Debtor that the Holder of such Secured Claim or Priority Claim seeks to receive payments from Debtor on the Secured Claim or Priority Claim or otherwise seeks to enforce Debtor's obligations under the Plan or otherwise enforce the Secured Claim or Priority Claim and (ii) any dispute regarding the Secured or Priority Distribution Refusal and its implications is resolved by agreement of the parties or the Bankruptcy Court (the "Tolling Period"). Only in the event of such notice to Debtor shall Debtor's or the Subchapter V Trustee's (as applicable) obligations to perform as to the applicable Secured Claim or Priority Claim resume. The Tolling Period shall: (i) extend the term of the payments on such Secured Claim or Priority Claim and (ii) bar any interest and penalty from accruing on the Secured Claim or Priority Claim until such time as any dispute regarding the Secured or Priority Distribution Refusal shall be resolved by a Final Order of the Court. Notwithstanding anything in the Plan or otherwise to the contrary, no provision allowing the imposition of late fees, default interest, late charges, damages, or costs and fees against the Debtor or the Debtor's property shall be applicable during the Tolling Period or any period during which a dispute regarding a Tolling Period is being resolved. For purposes of clarification, Debtor or the Subchapter V Trustee (as applicable) shall not be required to make any lump sum cure of payments or Distributions which would have otherwise come due during the Tolling Period or any period during which a dispute regarding a or arising during a Tolling Period is unresolved, and Debtor or the Subchapter V Trustee (as applicable) shall recommence Distributions upon the resolution of such on the terms in the Plan as tolled.

8.5 *Distributions to Holders as of the Record Date.* All Distributions on Allowed Claims shall be made to the Record Holders of such Claims. As of the close of business on the Record Date, the Claims register maintained by the Bankruptcy Court shall be closed, and there shall be no further change in the Record Holder of any Claim. Debtor shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. Debtor shall instead be entitled to recognize and deal for all purposes under this Plan with the Record Holders as of the Record Date.

8.6 *Fractional Dollars.* Any other provision of this Plan notwithstanding, the Debtor or the Subchapter V Trustee (as applicable) shall not be required to make Distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under this Plan would otherwise be called for, at Debtor's or the Subchapter V Trustee's (as applicable) option the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down.

8.7 *Withholding Taxes.* Debtor shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions under this Plan shall be subject to any such withholding and reporting requirements.

## **Article 9**

### **Procedures for Treating and Resolving Disputed Claims**



9.1 *Objections to Claims.* Debtor shall be entitled to object to Claims, provided, however, that Debtor shall not be entitled to object to Claims that have been Allowed by a Final Order entered by the Bankruptcy Court prior to the Effective Date.

9.2 *No Distributions Pending Allowance.* Except as otherwise provided herein, no Distributions will be made with respect to any portion of a Claim unless and until (i) no objection to such Claim has been filed, or (ii) any objection to such Claim has been settled, withdrawn or overruled pursuant to a Final Order of the Bankruptcy Court.

9.3 *Resolution of Claims Objections.* On and after the Effective Date, Debtor shall have the authority to compromise, settle, otherwise resolve, or withdraw any objections to Claims without approval of the Bankruptcy Court.

## **Article 10**

### **Provision for Assumption of Unexpired Leases and Executory Contracts**

#### **10.1 *Provisions Regarding Executory Contracts.***

As described in Article 4, Class 5 above, Debtor, under the Plan, hereby assumes those Executory Contracts between the Debtor and holders of pre-petition executory contracts under certain lease agreements and pending contracts (collectively, the “Executory Contracts”) as set forth therein. Debtor shall assume the Executory Contracts upon Confirmation of this Plan unless otherwise rejected by Order of the Court. Debtor reserves the right to reject any contract as it deems necessary. Any unexpired pre-petition leases or executory contracts which are not expressly assumed under the Plan, Article 4, Class 5, or are the subject of a pending motion to assume as of the Effective Date shall be deemed rejected pursuant to § 365 of the Bankruptcy Code on the Confirmation Date. Under the terms of the Plan, a proof of claim for damages arising from such rejection must be filed in compliance with the Bankruptcy Rules on or before sixty (60) days after the Confirmation Date. Any claims which are not timely filed will be disallowed and discharged.

## **Article 11**

### **Effect of Plan on Claims and Interests**

11.1 *Vesting of Debtor’s Assets.* Except as otherwise explicitly provided in the Plan, upon the Court’s entry of the Confirmation Order, all property comprising the Estate (including Retained Actions, but excluding property that has been abandoned pursuant to an order of the Bankruptcy Court) shall revert in Debtor free and clear of all Claims, Liens, charges, encumbrances, rights and Interests of creditors and equity security holders, except as specifically provided in the Plan. As of the earlier of the Effective Date and the entry of a Final Decree, Debtor may operate its business and use, acquire, and dispose of property and settle and compromise Claims or Interests without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and Confirmation Order.



11.2 *Discharge of Debtor.* Pursuant to § 1141 of the Bankruptcy Code, except as otherwise specifically provided in the Plan or in the Confirmation Order, the Distributions and rights that are provided in the Plan shall be in complete satisfaction, discharge, and release of all Claims and Causes of Action against Debtor, whether known or unknown, including any and all liabilities of Debtor, Liens on Debtor's assets, obligations of Debtor, rights against Debtor, and Interests in Debtor or its Estate that arose prior to the Confirmation Date regardless of whether a claimant accepted or rejected the Plan (the "Discharge").

11.2.1 Discharge if Plan Confirmed Under § 1191(a). If the Plan is confirmed under § 1191(a), the Discharge shall issue upon Confirmation of Debtor's Plan.

11.2.2 Discharge if Plan Confirmed Under § 1191(b). If the Plan is confirmed under § 1191(b), as soon as practicable after Debtor's completion of the payments expressly provided for under this Plan due within the first three (3) years of the plan, or such longer period not to exceed five (5) years as the Court may fix within the Confirmation Order, the Court shall grant Debtor a Discharge of all debts.

11.3 *Setoffs.* Debtor may, but shall not be required to, set off against any Claim, and the payments or other Distributions to be made pursuant to this Plan in respect of such Claim, claims of any nature whatsoever that Debtor may have now or in the future against such Holder; but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by Debtor of any such claim that Debtor may have against such Holder.

11.4 *Exculpation and Limitation of Liability.* Under the Plan, Debtor's current and/or post-Filing Date and pre-Effective Date members, officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment bankers, or agents and any of such parties' successors and assigns, except as may be retained by this Plan, shall not have or incur, and shall be released from, any claim, obligation, cause of action, or liability to one another or to any Holder of any Claim or Interest, or any other party-in-interest, or any of their respective agents, employees, representatives, financial advisor, attorneys, or Affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of the Bankruptcy Case, the negotiation and filing of the Plan, the filing of the Bankruptcy Case, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan, except for their willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. No Holder of any Claim or Interest, or other party in interest, none of their respective agents, employees, representatives, financial advisors, or Affiliates, and no successors or assigns of the foregoing, shall have any right of action against the parties listed in this provision for any act or omission in connection with, relating to, or arising out of the Bankruptcy Case, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan. Fees and expenses which Debtor owes to its Professionals and any allowed fees and expenses of the Subchapter V Trustee are excluded from this Exculpation.

11.5 *Injunction.* Upon entry of a Confirmation Order in this case, except as provided

for in this Plan, the Confirmation Order shall act as a permanent injunction against any Person: (a) commencing or continuing any action, (b) employing any process, or (c) any act to collect, offset, or recover any Claim against: (1) Debtor or (2) against any property of Debtor. Such injunction shall survive the closure of the Bankruptcy Case and this Court shall retain jurisdiction to enforce such injunction.

11.6 *Release by Holders of Claims and Interests.* Except as otherwise specifically provided in this Plan, on the Effective Date, the Released Parties shall be irrevocably and forever released and discharged from any claim, obligation, cause of action, or liability to any Holder of any Claim or Interest existing as of the Effective Date, in consideration of the obligations of the Debtor under this Plan and the payments on Claims to be delivered in connection with this Plan.

11.7 *Effect of Confirmation.*

11.7.1. Binding Effect. On the Confirmation Date, the provisions of this Plan shall be binding on Debtor, the Estate, all Holders of Claims against or Interests in Debtor, and all other parties-in-interest whether or not such Holders are Impaired and whether or not such Holders have accepted this Plan. Creditors shall have no right to enforce a Claim against Debtor, even following a default under the Plan, except to the extent and amount that any Claim of such creditor is provided for and then due under the Plan. This Plan shall supersede any and all prior documents, contracts, and agreements by and between any party bound by this Plan.

11.7.2 Filing of Reports. Debtor shall file all reports required by the Bankruptcy Code, Bankruptcy Rules, U.S. Trustee guidelines, and the rules and orders of the Bankruptcy Court. No other reports shall be required.

11.7.3 Post-Effective Date Retention of Professionals. Upon the Confirmation Date, any requirement that professionals comply with §§ 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date will terminate, and Debtor will employ and pay professionals in their ordinary course of business.

11.8 *Effect of Discharge on the Automatic Stay.* Except as provided otherwise in this Plan, from and after the Entry of the Debtor's Discharge as provided by § 11.2.1, the Automatic Stay of § 362(a) of the Bankruptcy Code shall terminate and be superseded by the Discharge Injunction of §524.

## **Article 12**

### **Conditions Precedent**

12.1 *Conditions to the Effective Date.* The following are conditions precedent to the occurrence of the Effective Date, each of which may be satisfied or waived in accordance with Article 12.2 of this Plan.

12.1.1 The Confirmation Order shall not have been vacated, reversed, appealed or modified and, as of the Effective Date, shall not have been stayed;

12.1.2 All documents and agreements to be executed on the Effective Date or otherwise necessary to implement this Plan shall be in form and substance that is acceptable to Debtor in its reasonable discretion; and

12.1.3 Debtor shall have received any authorization, consent, regulatory approval, ruling, letter, opinion, or document that may be necessary to implement this Plan and that is required by law, regulation, or order.

12.2 *Waiver of Conditions to Confirmation or Consummation.* The conditions set forth in Article 12.1 of this Plan may be waived, in whole or in part, by Debtor without any notice to any other parties in interest or the Bankruptcy Court and without a hearing. The failure to satisfy or waive any condition to the Confirmation Date or the Effective Date may be asserted by Debtor in its sole discretion regardless of the circumstances giving rise to the failure of such condition to be satisfied (including any action or inaction by Debtor). The failure of Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

**Article 13**  
**Retention and Scope of Jurisdiction of the Bankruptcy Court**

13.1 *Retention of Jurisdiction.* Subsequent to the Effective Date, the Bankruptcy Court shall have or retain jurisdiction for the following purposes:

13.1.1 Resolve issues with respect to the Debtor's substantial consummation of the Plan and to the extent the Debtor seeks to amend or modify the Plan;

13.1.2 Resolve any motions, adversary proceedings, or contested matters, that are pending as of the date of substantial consummation;

13.1.3 Adjudicate objections to claims;

13.1.4 Resolve disputes with respect to, enforce and interpret any order regarding and all injunctions created as a result of confirmation of the Plan;

13.1.5 Adjudicate modifications of the plan under 11 U.S.C. § 1193;

13.1.6 Review and consider issues associated with the Debtor's final report and entry of final decree, and to enter a final decree;

13.1.7 Enter such orders as the Court deems necessary or appropriate with respect to enforcement of the Plan;

13.1.8 Resolve all matters related to the rejection, and assumption and/or assignment of any Executory Contract or Unexpired Lease of Debtor;

13.1.9 Resolve all Retained Actions, Avoidance Actions and other Causes of Action commenced and/or pursued by Debtor;

13.1.10 Resolve all applications for Professional Compensation;

13.1.11 Resolve any defect or omission or reconcile any inconsistency in this Plan, as may be necessary to carry out the intent and purpose of this Plan;

13.1.12 Construe or interpret any provisions in this Plan and to issue such orders as may be necessary for the implementation, execution and consummation of this Plan, to the extent authorized by the Bankruptcy Court;

13.1.13 Adjudicate controversies arising out of the administration of the Estate or the implementation of this Plan;

13.1.14 Make such determinations and enter such orders as may be necessary to effectuate all the terms and conditions of this Plan, including the Distribution of funds from the Estate and the payment of claims;

13.1.15 Determine any suit or proceeding brought by Debtor to recover property under any provisions of the Bankruptcy Code;

13.1.16 Determine any tax disputes concerning Debtor and to determine and declare any tax effects under this Plan;

13.1.17 Determine such other matters as may be provided for in this Plan or the Confirmation Order or as may be authorized by or under the provisions of the Bankruptcy Code;

13.1.18 Determine any controversies, actions or disputes that may arise under the provisions of this Plan, or the rights, duties or obligations of any Person under the provisions of this Plan;

13.1.19 Adjudicate any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of, or in connection with, any agreement pursuant to which Debtor sold any of its assets during the Bankruptcy Case;

13.1.20 Enter a Final Decree, order of discharge; and any other Order related to this administration of this Subchapter V case or Plan; and

13.1.21. Enforce any default in payment under §4.6 of the Plan.

13.2 *Alternative Jurisdiction.* In the event that the Bankruptcy Court is found to lack jurisdiction to resolve any matter, then the District Court shall hear and determine such matter. If the District Court does not have jurisdiction, then the matter may be brought before any court having jurisdiction with regard thereto. Notwithstanding anything to the contrary herein, Debtor shall be authorized to bring any action related to a lease, contract or account (including any account receivable due to Debtor) to which Debtor is a party in any state or local court having jurisdiction over such action.

13.3 *Final Decree.* The Bankruptcy Court, upon application of Debtor, at any time after “substantial consummation” of the Plan as defined in §1101(2) of the Bankruptcy Code, may enter a final decree in the case, notwithstanding the fact that additional funds may eventually be distributed to parties in interest. In such event, the Bankruptcy Court may enter an Order closing this case pursuant to §350 of the Bankruptcy Code, provided, however, that: (a) Debtor shall continue to have the rights, powers, and duties set forth in this Plan; (b) any provision of this Plan requiring the absence of an objection shall no longer be required, except as otherwise ordered by the Bankruptcy Court; and (c) the Bankruptcy Court may from time to time reopen the Bankruptcy Case if appropriate under applicable law, including without limitation any of the following purposes: (1) administering Assets; (2) entertaining any adversary proceedings, contested matters or applications Debtor has brought or brings with regard to the liquidation of Assets and the prosecution of Causes of Action or otherwise administering the Plan; (3) enforcing or interpreting this Plan or supervising its implementation; or (4) for other cause.

## **Article 14**

### **Miscellaneous Provisions**

14.1 *Modification of the Plan.* Debtor shall be allowed to modify this Plan pursuant to §1193 of the Bankruptcy Code to the extent applicable law permits.

14.2 *Pre-Confirmation Modifications.* Debtor may modify the Plan at any time before the Confirmation Hearing by filing the modification with the Court.

14.3 *Modification After Confirmation and Prior to Substantial Consummation.* Debtor may modify the Plan prior to substantial consummation upon a showing that circumstances warrant such a modification and after a notice and hearing. If the Plan was confirmed under §1191(a), any holder of a claim or interest that has accepted or rejected the Plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless, within the time fixed by the Court, such holder changes its previous acceptance or rejection. Notwithstanding such provision, Debtor may not modify the treatment of McGough or his Allowed Class 6 Claim unless expressly approved in advance by McGough in writing.

14.4 *Modification After Substantial Consummation.* If the Plan has been confirmed under § 1191(b), Debtor may modify the Plan after substantial consummation upon a showing the circumstances warrant such a modification and after a notice and hearing. Notwithstanding such provision, Debtor may not modify the treatment of McGough or his Allowed Class 6 Claim unless expressly approved in advance by McGough in writing.

14.5 *Allocation of Plan Distributions Between Principal and Interest.* To the extent that any Allowed Claim entitled to a Distribution under this Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for United States federal income tax purposes to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of the Claim representing accrued but unpaid interest.

14.6 *Applicable Law.* Except to the extent that the Bankruptcy Code or the Bankruptcy Rules are applicable, the rights and obligations arising under this Plan shall be governed by the laws of the State of Georgia.

14.7 *Preparation of Estate Returns and Resolution of Tax Claims.* Debtor shall file all tax returns and other filings with governmental authorities and may file determination requests under § 505 of the Bankruptcy Code to resolve any Disputed Claim relating to taxes with a governmental authority.

14.8 *Headings.* The headings of the Articles and the sections of this Plan have been used for convenience only and shall not limit or otherwise affect the meaning thereof.

14.9 *Revocation of Plan.* Debtor reserves the right, unilaterally and unconditionally, to revoke and/or withdraw this Plan at any time prior to entry of the Confirmation Order, and upon such revocation and/or withdrawal this Plan shall be deemed null and void and of no force and effect.

14.10 *No Admissions; Objection to Claims.* Nothing in this Plan shall be deemed to constitute an admission that any person, individual, corporation, partnership, trust, venture,



governmental unit, or any other form of legal entity or person as being the Holder of a Claim is the Holder of an Allowed Claim. The failure of Debtor to object to or examine any Claim for purposes of voting shall not be deemed a waiver of Debtor's rights to object to or reexamine such Claim in whole or in part.

14.11 *No Bar to Suits.* Except as otherwise provided herein, neither this Plan nor confirmation hereof shall operate to bar or estop Debtor from commencing any Cause of Action, or other legal action against any Holder of a Claim or any individual, corporation, partnership, trust, venture, governmental unit, or any other form of legal entity, whether such Cause of Action, or any other legal action was disclosed in an document filed by Debtor in connection with this Bankruptcy Case or whether or not any payment was made to is made on account of any Claim. Without limitation, Debtor retains and reserves the right to prosecute Retained Actions.

14.12 *Exhibits/Schedules.* All exhibits and schedules to this Plan, and all attachment thereto, are incorporated into and are made a part of this Plan as if set forth in full herein.

## **Article 15**

### **Tax Consequences**

Tax consequences resulting from confirmation of the Plan can vary greatly among the various Classes of Creditors and holders of Interests, or within each Class. Significant tax consequences may occur as a result of confirmation of the Plan under the Internal Revenue Code and pursuant to state, local, and foreign tax statutes. Because of the various tax issues involved, the differences in the nature of the Claims of various Creditors, the taxpayer status and methods of accounting and prior actions taken by Creditors with respect to their Claims, as well as the possibility that events subsequent to the date hereof could change the tax consequences, this discussion is intended to be general in nature only. No specific tax consequences to any Creditor or holder of an Interest are represented, implied, or warranted. Each holder of a Claim or Interest should seek professional tax advice.

**The proponent of the Plan assumes no responsibility for the tax effect that consummation of the Plan will have on any given Holder of a Claim or Interest. Holders of Claims or Interest are strongly urged to consult their own tax advisors covering the federal, state, local and foreign tax consequences of the Plan to their individual situation.**

Respectfully submitted this 9<sup>th</sup> Day November, 2022.

*/s/ Gatra Mallard*  
By Gatra Mallard  
Its\_\_ Board President

**STEINFELD & STEINFELD, PC**

*/s/ Shayna M. Steinfeld*

Shayna M. Steinfeld  
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Attorneys for Debtor

**EXHIBIT “A”  
BUDGET**

	<b>2023 Monthly Average</b>	<b>2023 Total Year</b>	<b>2024 An- nual</b>	<b>2025 An- nual</b>	<b>2026 An- nual</b>	<b>2027 An- nual</b>
<b>Income</b>			4% increase	4% increase	4% increase	4% increase
Unit Fee	\$387,388.08	\$4,648,656.96	\$4,850,031.81	\$5,059,461.65	\$5,277,268.69	\$5,503,788.00
Second Resident Revenue	\$7,239.04	\$86,868.48	\$90,343.22	\$90,343.22	\$90,343.22	\$90,343.22
Dining Services Income	\$3,000.00	\$36,000.00	\$37,440.00	\$38,937.60	\$40,495.10	\$42,114.91
Admin- istration Fee (new name)	\$1,000.00	\$12,000.00	\$12,480.00	\$12,979.20	\$13,498.37	\$14,038.30
New Resident Capital Contribu- tion	\$1,000.00	\$12,000.00	\$12,480.00	\$12,979.20	\$13,498.37	\$14,038.30
Montclair Monthly Fees	\$172,100.00	\$2,065,200.00	\$2,147,808.00	\$2,233,720.32	\$2,323,069.13	\$2,415,991.90
Late Fees	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Montclair Co- munity Fees	\$2,500.00	\$30,000.00	\$31,200.00	\$32,448.00	\$33,745.92	\$35,095.76
Beauty Salon Revenue	\$250.00	\$3,000.00	\$3,120.00	\$3,244.80	\$3,374.59	\$3,509.58
House- keeping Revenue	\$150.00	\$1,800.00	\$1,872.00	\$1,946.88	\$2,024.76	\$2,105.75
Mainte- nance Revenue	\$1,000.00	\$12,000.00	\$12,480.00	\$12,979.20	\$13,498.37	\$14,038.30

Miscellaneous Revenue	\$900.00	\$10,800.00	\$11,232.00	\$11,681.28	\$12,148.53	\$12,634.47
Interest Income	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Resident Services Reimbursables	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Uncategorized Income	\$10,000.00	\$120,000.00	\$124,800.00	\$129,792.00	\$134,983.68	\$140,383.03
<b>Total month</b>	<b>\$586,527.12</b>	<b>\$7,038,325.44</b>	<b>\$7,335,287.03</b>	<b>\$7,640,513.35</b>	<b>\$7,957,948.73</b>	<b>\$8,288,081.52</b>
<b>Budget By Department</b>						
Administration Expenses	\$78,886.24	\$946,634.88	\$979,767.10	\$1,018,957.78	\$1,059,716.10	\$1,102,104.74
Community Life!	\$46,680.59	\$560,167.08	\$582,573.76	\$605,876.71	\$630,111.78	\$655,316.25
Dining Services Expenses	\$200,522.09	\$2,406,265.08	\$2,502,515.68	\$2,602,616.31	\$2,706,720.96	\$2,814,989.80
Montclair Expenses	\$99,535.65	\$1,194,427.80	\$1,236,232.77	\$1,285,682.08	\$1,337,109.37	\$1,390,593.74
House-keeping Expenses	\$27,338.22	\$328,058.64	\$341,180.99	\$354,828.23	\$369,021.35	\$383,782.21
Building & Grounds Expenses	\$99,022.61	\$1,188,271.32	\$1,235,802.17	\$1,285,234.26	\$1,336,515.11	\$1,389,842.06
Courtesy Officer Expenses	\$12,766.72	\$153,200.64	\$157,796.66	\$164,108.53	\$170,672.87	\$177,499.78
Transfer to capital reserve	\$15,675.00	\$188,100.00	\$211,052.57	\$234,923.24	\$259,748.74	\$285,567.26
<b>Total Income</b>	<b>\$586,527.12</b>	<b>\$7,038,325.44</b>	<b>\$7,335,287.03</b>	<b>\$7,640,513.35</b>	<b>\$7,957,948.73</b>	<b>\$8,288,081.52</b>

<b>Total Expenses</b>	\$580,427.12	\$6,965,125.44	\$7,246,921.71	\$7,552,227.15	\$7,869,616.28	\$8,199,695.85
<b>Net Revenue</b>	\$6,100.00	\$73,200.00	\$88,365.32	\$88,286.20	\$88,332.45	\$88,385.67
<b>Payments to McGough</b>		\$72,000.00	\$72,000.00	\$72,000.00	\$72,000.00	\$72,000.00
<b>Payments to Other Creditors</b>		\$1,084.07	\$16,225.00	\$16,225.00	\$16,225.00	\$16,225.00
<b>Total after re-payment</b>		\$115.93	\$140.32	\$61.20	\$107.45	\$160.67

### Exhibit B

#### TIMELINE OF PANDEMIC RESTRICTIONS IMPOSED ON MONTCLAIR RESIDENTS AND VISITATION:

##### MONTCLAIR PANDEMIC TIMELINE:

Although Montclair did not have any residents die of the Covid-19 virus until July of 2021, the virus negatively impacted operations and occupancy. In January 2020 occupancy was **41**. Occupancy decreased steadily through June's low of **30**. In March 2020 visitors were barred from Montclair and were not permitted to reenter until the lifting of Governor Kemp's Executive Order in **March 2021**.

##### Montclair pandemic timeline:

- **3/11/2020:** Restricted visitation hours/screening for symptoms.
- **3/13/2020:** Visitors will not be allowed access, except under extenuating or emergent circumstances. Connecting family members though telephone, email, text, video chat or Facebook. Essential personal only /screening for symptoms
- **3/14/2020:** Governor Kemp; Declaring a Public Health State of Emergency for Novel Coronavirus (Covid-19)
- **4/2/2020:** Governor Kemp issued a statewide Shelter in Place Executive Order to help slow the spread of Covid-19.
  - Persons required to Shelter in Place shall NOT receive visitors, except as follows:

- Visitors providing medical or emergency services or medical supplies or medications, including home hospice.
  - Visitors providing support for person's activities of daily living (bathing, dressing, transferring)
  - Visitors providing support for necessary supplies and services, such as food (Meals on Wheels) and equipment for safety.
  - Visitors received during end-of life circumstances
- **4/2020:** National Guard came onsite and tested all residents and staff. They also help disinfect our community.
- **5/2020:** Started coordinating "Drive Thru" visits for family members. Family members remained in vehicle and visited with Resident who was on sidewalk.
- **6/2020:** Georgia Governor Brian Kemp issued an Executive Order on June 11, 2020 that provides additional guidance related to the ongoing Covid-19 public health emergency.
  - The Executive Order does not preclude controlled outdoor visitation that may be conducted as part of a compassionate plan of care as long as certain guidelines are strictly adhered to.
- **7/2020:** Started outside patio scheduled visitation with family members.
- **8/2021:** Governor Kemp has issued an extension of the shelter in place orders directed at personal care homes like Montclair that continue to prohibit all visitors and non-essential personnel. The order was again extended to, August 12th, 2020.
- **8/15/2020:** Montclair's 1<sup>st</sup> resident Covid-19 case. (Resident made full recovery)
  - Montclair under quarantine until September 1<sup>st</sup>, 2020.
- **11/2020:** Possible resident exposure, Montclair went into quarantine for 2 weeks to watched for signs and symptoms and waited for testing.
- **12/2020:** Covid-19 testing on demand with Atlanta Urgent Care. They tested all Montclair residents and staff. Monthly testing is set up through Atlanta Urgent Care.
- **12/2020:** 2<sup>nd</sup> resident tested positive for Covid-19.
  - Visitors were banned over the Christmas holidays, from December 5 to December 22, 2020 because of Georgia Department of Public Health restrictions regarding when residents test positive to Covid-19. Only visits allowed were outside and by the downstairs fireplace; no visits allowed upstairs in Montclair until March of 2021.
- **1/2021:** Clairmont Place staff and the Montclair Residents received the Covid-19 vaccine onsite at Clairmont Place on January 20th with the second dose administered on February 10, 2021 through the government rollout to long-term care facilities
- **1/15/21:** Exposure, paused family outside visits. Fourth resident with Covid-19. Under quarantine until January 28<sup>th</sup>.
- **1/26/2021:** Fifth resident with Covid-19 (Fully recovered). Under quarantine until February 10<sup>th</sup>, 2021
- **2/10/2021:** Second dose of Covid-19 Vaccinations for staff and residents.
- **3/2021:** Vaccinations are complete, which enhance resident's quality of life. The first priority being socialization. Clairmont Place and Montclair start back up with small social distancing activities (masks included) and making appointments to the hair salon for some much-needed haircuts.



- **3/31/2021:** The new guidelines involve opening Montclair's communal dining and planned room visits for the vaccinated and small activities for residents who have been vaccinated. Guidelines are established for each type of visit available starting Wednesday, March 31st.
- **7/2021: BREAKTHROUGH CASE #1:** July 21, 2021 to August 2, 2021; quarantined with the breakthrough case and reopened to vaccinated visitors only on August 2, 2021. The breakthrough resident died of Covid-19 and was the first Covid-19 death of a Montclair resident.
- **8/2021: NEW Covid-19 policy**
  - ALL visitors (staff, family, third party vendors) MUST be vaccinated and show a NEGATIVE COVID-19 test from within the last 7 days.
  - Weekly staff Covid-19 screening/ Covid-19 testing provided by Atlanta Urgent Care
  - Weekly resident screening/Covid-19 testing provided by Agape Chronic Care. In house testing available when needed.
- **9/2021: BREAKTHROUGH CASE #2:** This second breakthrough caused visitation to be suspended due to a new quarantine from September 11, 2021 to September 16, 2021. Initial rapid tests were conducted on September 11, 2021. Residents were monitored for signs and symptoms and were retested with a PCR test on Wednesday September 15, 2021. ALL test results were negative. The vaccinated resident died of Covid-19, becoming the second Covid-19 fatality.

*After vaccinations, Montclair had five months without any known Covid-19 cases. There were no Covid-19 cases between the end of February 2021 until the end of July 2021. Montclair began to reopen to vaccinated visitors on **March 31, 2021**, closed again from **July 21<sup>st</sup>, 2021**, to **August 2, 2021** during a vaccination breakthrough event, and reopened to vaccinated visitors only on **August 2, 2021**.*

### **EXHIBIT C**

#### **Maintenance Issues**

- I. Life Safety in Montclair Personal Care Community
  - A. Fire exits for Montclair Personal Care residents were removed during new construction, either by changes that caused them to exit to the interior rather than the exterior or by removing access.
  - B. Hallways to certain fire exits narrow, in violation of Georgia code. Georgia's Building Code requires that the minimum width of egress should not be reduced along the path to the egress.
  - C. There is at least one fire hydrant that is actually not connected to water.
  - D. Plumbing: certain pipes narrowed and recirculating pumps were not installed, creating a breeding ground for disease.
- II. Hidden Defects.
  - A. The dry fire hydrant.
  - B. Construction behind walls are in violation of Georgia Code. There is improper plumbing with no recirculating pumps; there are missing shower

pans, there is no wiring for ADA compatible doors, there is non-commercial HVAC ductwork.

- C. Atlanta Gas Light was never contacted regarding any additions to the facility. Atlanta Gas Light has no record of any contact about work at Clairmont Place. The increased capacity put an increased load on gas beyond its capacity.
- D. No ADA accessibility of the newly constructed front door and main entrance, making it difficult to open. Any resident in a wheelchair cannot enter the facility without assistance.
- E. In Montclair, the new construction failed to include additional common space while adding rooms for additional residents. For example, the Dining Room cannot hold the 58 persons Montclair is now licensed to host.

### III. Improper Maintenance.

- A. Overall appearance: the furniture and walls and flooring are all in need of an overhaul. The Main stairway has chipped and broken tiles.
- B. The elevators are small and insufficient (both in the 1800 Building and 2100 Building). The 1800 Building needs additional elevators.
- C. The hydraulic closers on doors were removed when leaking rather than properly repaired or replaced (according to maintenance staff) and they need to be replaced to comply with fire safety standards.
- D. The Public bathrooms in the 2100 Building are outdated and need to be updated; there were holes in the wall.
- E. There were non-ADA compliant vehicles ultimately resulting in residents donating a bus with reservation of rights in 2021.
- F. There is no retaining wall to prevent runoff to the driveway and storm drain from elevated Phase 1/West Addition. This is a potential hazard.
- G. The Exterior doors to the patio are not ADA accessible, preventing access for more Covid-friendly outdoor meals.