

<b>UNITED STATES BANKRUPTCY COURT</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: The Cliffs Club & Hospitality Group, Inc.		Case Number: 12-01220
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Land of WNC, LLC and Jason Della Vecchia, individually		<b>COURT USE ONLY</b>
Name and address where notices should be sent: Melrose, Seago & Lay, P.A. P.O. Box 1011 Sylva, NC 28779 Telephone number: (828) 586-3200 email: guy@mountainverdict.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ <i>(If known)</i>  Filed on: _____
Name and address where payment should be sent (if different from above):  Telephone number: _____ email: _____		<b>RECEIVED</b>  <b>APR 30 2012</b>  <b>BMC GROUP</b>
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>50,000.00</u> plus consequential damages  If all or part of the claim is secured, complete item 4.  If all or part of the claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
<b>2. Basis for Claim:</b> <u>Breach of Contract, Unfair &amp; Deceptive Trade Practices Act</u> (See instruction #2)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b>  6 3 3 8	<b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)
<b>4. Secured Claim</b> (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:  Value of Property: \$ _____  Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____  Basis for perfection: _____  Amount of Secured Claim: \$ _____  Amount Unsecured: \$ <u>50,000.00</u> plus consequential damages
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a).</b> If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
		Amount entitled to priority: \$ _____
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		



**7. Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:


**8. Signature:** (See instruction #8)

Check the appropriate box.

- I am the creditor.      I am the creditor's authorized agent.      I am the trustee, or the debtor, or their authorized agent.      I am a guarantor, surety, indorser, or other codebtor. (Attach copy of power of attorney, if any.)     (See Bankruptcy Rule 3004.)     (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Aqatha B. Guy  
 Title: Attorney  
 Company: Melrose, Seago & Lay, P.A.  
 Address and telephone number (if different from notice address above):  
 \_\_\_\_\_  
 \_\_\_\_\_

     4/23/12  
 (Signature)     (Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

*Penalty for presenting fraudulent claim:* Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**3b. Uniform Claim Identifier:**

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

**4. Secured Claim:**

Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).**

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

**8. Date and Signature:**

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

## DEFINITIONS

## INFORMATION

**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

**Claim**

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. § 506 (a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. § 507 (a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

STATE OF NORTH CAROLINA  
BUNCOMBE COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2011 AUG 30 PM 4: 04

FILE NO. 11-CV-04503

BUNCOMBE COUNTY, C.S.C.

LAND OF WNC, LLC, a North Carolina  
limited liability company and BY WMA  
JASON DELLA VECCHIA, individually,  
Plaintiffs,

vs.

COMPLAINT

THE CLIFFS AT WALNUT COVE  
GOLF & COUNTRY CLUB, LLC,  
A South Carolina limited liability company  
Defendant.

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Plaintiffs complain of the Defendant states as follows:

1. Plaintiff Land of WNC, LLC is a North Carolina limited liability company organized under and by virtue of the laws of the State of North Carolina, with its principal place of business in Buncombe County, North Carolina.
2. Plaintiff Jason Della Vecchia is a citizen and resident of Buncombe County, North Carolina.
3. Defendant The Cliffs at Walnut Cove Golf & Country Club, LLC (hereafter "Golf Club") is a South Carolina limited liability company doing business in Buncombe County, North Carolina and manages and operates the golf club and country club at The Cliffs at Walnut Cove, a residential development in Buncombe County, North Carolina.
4. Plaintiff Jason Della Vecchia is an agent and managing member of Land of WNC, LLC.
5. This action arises out of the contract for membership in a Golf Club as purchased by Plaintiffs as part of the purchase of a residential lot in The Cliffs at Walnut Cove on or about September 2008.
6. On or about November 6, 2008, Plaintiff signed a Walnut Cove Golf Membership Agreement which is attached hereto as Exhibit "A" and became a "Golf" classification member.
7. As part of said agreement, Plaintiffs were provided a Master Membership Plan for the Golf Club which was referenced and impliedly incorporated within the membership agreement and also which is incorporated herein by express reference.

8. Since before September 23, 2010, pursuant to the terms of the Master Membership Plan, Plaintiffs notified Defendant, by and through agents working in the course and scope of employment for Defendant, of its intent to downgrade the membership classification to a "Family" membership and requested a refund of the difference in the deposit for such classification in accordance with Section 11.3 of the Master Membership Plan.

9. Despite many demands for the refund by Plaintiffs since before September 23, 2010, Defendant has willfully failed and refused to refund his deposit difference in the amount of \$50,000.00.

10. In attempts to avoid the payment of the refund to Plaintiffs, Defendant has repeatedly and intentionally misrepresented the terms of the Master Membership Plan to Plaintiffs.

#### **FIRST CLAIM FOR RELIEF BREACH OF CONTRACT**

11. The preceding paragraphs are re-alleged and incorporated here.

12. Plaintiffs and Defendant entered into an agreement related the membership at the Golf Club which agreement references and impliedly incorporates said Master Member Plan into said agreement.

13. Plaintiffs have complied with all terms of the agreement and Master Membership Plan related to the membership since the purchase of said membership in September 2008.

14. Defendant breached the terms of the agreement by failing to refund of the difference in the amount of the membership deposit in the amount of \$50,000.00 within a reasonable time of the notification of Plaintiffs' downgrade.

15. As a direct and proximate result of the breach of contract by the Defendant, Plaintiffs have been damaged in an amount of \$50,000.00 plus consequential damages and loss of use of said \$50,000.00.

#### **SECOND CLAIM FOR RELIEF UDTPA**

16. The preceding paragraphs are here re-alleged and incorporated by reference.

17. The Defendant's acts and omissions constitute unfair and deceptive acts or practices in or affecting commerce, which proximately caused actual injury to Plaintiffs.

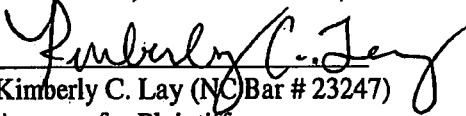
18. As a result of the Defendant's unfair and deceptive acts or practices, and pursuant to Chapter 75 of the NC General Statutes, Plaintiffs are entitled to recover damages from the Defendant in an amount in excess of Fifty Thousand Dollars (\$50,000.00), to be trebled, plus reasonable attorneys' fees and costs.

**WHEREFORE**, Plaintiffs seek judgment in his favor against the Defendant as follows:

1. \$50,000.00 plus consequential damages and loss of use of said refund amount due pursuant to the First Claim for Relief.
2. Statutory treble damages for each violation of Unfair and Deceptive Practices Act, attorney fees and costs pursuant to the Second Claim for Relief.
3. For such other and further relief as the Court deems just and proper.

This the 30<sup>th</sup> day of August, 2011

**MELROSE, SEAGO & LAY, P.A.**

  
\_\_\_\_\_  
Kimberly C. Lay (NC Bar # 23247)  
Attorney for Plaintiff  
P.O. Box 1011  
Sylva, N.C. 28779  
(828) 586-3200  
[lay@mountainverdict.com](mailto:lay@mountainverdict.com)

**EXHIBIT**

"A"

**THE CLIFFS GOLF AND COUNTRY CLUB, INC.  
WALNUT COVE GOLF MEMBERSHIP AGREEMENT**

This is to certify that **Jason DellaVecchia** has made application for membership in The Cliffs Golf and Country Club at The Cliffs at Walnut Cove. The membership classification applied for is a **Walnut Cove Golf Membership**.

It is acknowledged that he/she will submit membership fees in the amount **One Hundred and Fifty Thousand Dollars (\$150,000)**. The following is the scheduled due dates and amounts of future payments:

**Per terms of Real Estate Purchase Agreement &  
Membership Finance Addendum**

It is further agreed that the member(s) understand the membership classification purchased, its privileges and benefits, and refund values associated with a resignation from the club, as outlined in The Cliffs Golf & Country Clubs constitution and by-laws, rules and regulations.

<b>MEMBERSHIP CLASSIFICATION:</b>	<b>Walnut Cove Golf</b>
<b>MEMBERSHIP ACCOUNT NUMBER:</b>	<b>D313</b>
<b>INITIATION DEPOSIT:</b>	<b>\$150,000.00</b>
<b>PROPERTY REFERENCE:</b>	<b>Section <u>Cove Park</u> Lot <u>83</u></b>

I have received and reviewed official club documents, specifically The Cliffs and Country Club, Inc. constitution and by-laws, rules and regulations outlining the Cliffs Membership Program. I agree to participate and become enrolled as a member of The Cliffs at Walnut Cove Golf and Country Club, Inc., which is managed and operated by The Cliffs Golf and Country Club, Inc. and agree to pay the applicable membership fees in the amount(s) indicated above.

My rights and privileges as a member shall be governed by the plan documents and the club's by-laws, rules and regulations. Membership in the club does not convey any ownership, stock or equity certificate or other rights of ownership. As a member, I cannot be assessed as a matter of contract with the Club, and I assume no liability whatsoever in connection with the membership other than the payment of an applicable membership fee, dues and charges incurred by myself, my family and guests.

The Club reserves the right to set membership classification limitations. The Club has the plenary power to modify classes of memberships, their definitions, privileges, requirements and availability.

I shall be bound by the terms and conditions of the plan documents, as they may be amended from time to time in accordance with their terms and this membership purchase agreement.

I agree to pay the dues, fees and charges applicable to my membership classification(s) set forth by the club ownership, as it may be amended from time to time.

I hereby agree to release and discharge the Club, its ownership, affiliates, employees and agents from any and all claims and causes of actions that I may have against any of them regarding the Club membership program and facilities, except claims and causes of action arising from misrepresentations or omissions in the club documents.

By signing this form, the Member(s) acknowledges, as a matter of record, the type of Membership classification, and its privileges, and the refund value of initiation deposit paid in the event of resignation or transfer of membership. Furthermore, the Member(s) has received a copy of the Clubs Master Membership Plan, rules and regulations, and has an understanding of the same.

9-19-08  
Date

Nate Weyand  
Nate Weyand  
Membership Director  
The Cliffs Golf and Country Clubs

11/6/08  
Date

Jason J. Dellwisch  
Member Signature [member and  
manager  
Land OK  
WVC LLC]





**Mark R. Melrose  
Randal Seago  
Kimberly C. Lay  
Nathan Earwood  
Agatha B. Guy**

*Your Mountain Legal Team*

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April 24, 2012

BMC Group, Inc.  
Attn: The Cliffs Club & Hospitality Group, Inc. Claims Processing  
18675 Lake Drive East  
Chanhassen, MN 55317

**RE: *The Cliffs Club & Hospitality Group, Inc. and  
The Cliffs at Walnut Cove Golf & Country Club, LLC  
Case No.: 12-01220 & 12-01227***

To Whom It May Concern:

Please find enclosed a Proof of Claim along with a copy, for each of the above-referenced cases. Please file the enclosed.

I have also enclosed a copy and a self-addressed stamped envelope for return of the file stamped copy for our file.

If you should have any questions or concerns, please do not hesitate to contact me.  
Thank you for your assistance.

Sincerely,

Ryan Edwards  
Paralegal to Agatha B. Guy

Enclosures

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Offices in Asheville, Waynesville and Sylva  
Toll Free: (800) 222-2430  
Mailing address: P.O. Box 1011 • Sylva, North Carolina • 28779  
Asheville • (828) 252-8511 • Waynesville • (828) 452-3141 • Sylva • (828) 586-3200  
[www.mountainverdict.com](http://www.mountainverdict.com) Fax (828) 586-8320

**MELROSE,**  
**SEAGO & LAY, P.A.**  
ATTORNEYS AT LAW

2775 US Highway 74 East  
P.O. Box 1011 • Sylva, NC 28779

RECEIVED  
APR 30 2012  
BMC GROUP

BMC Group, Inc.  
Attn: The Cliffs Club & Hospitality Group, Inc.  
Claims Processing  
18675 Lake Drive East  
Chanhassen, MN 55317