


<b>UNITED STATES BANKRUPTCY COURT</b> <i>District of South Carolina</i>		<b>PROOF OF CLAIM</b>
Name of Debtor: <i>The Cliffs at Keowee Springs Golf &amp; Country Club, LLC</i>	Case Number: <i>12-01230</i>	<div style="text-align: center; font-weight: bold; margin-bottom: 10px;">COURT USE ONLY</div> <input type="checkbox"/> Check this box if this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____  <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
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): <i>Ben + Jo Ann Shanley</i>		
Name and address where notices should be sent: <i>Ben Shanley</i> <i>2055 Sugarbark Club Drive</i> <i>Duluth, GA 30097</i> Telephone number: <i>678-957-0593</i> email: <i>J3BShanley@Bellsouth.net</i>		<div style="text-align: center; font-weight: bold; margin-bottom: 10px;">COURT USE ONLY</div> <input type="checkbox"/> Check this box if this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____  <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Name and address where payment should be sent (if different from above):  Telephone number: _____ email: _____		
1. Amount of Claim as of Date Case Filed: \$ <u><i>229,000.00</i></u>		
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.		
2. Basis for Claim: <i>Breach of contract for Keowee Springs Section 5, Lot 23 Infrastructure.</i> (See instruction #2) <i>(See Attached items)</i>		
3. Last four digits of any number by which creditor identifies debtor: <i>20-573898</i>	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (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: _____		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Value of Property: \$ _____		Basis for perfection: _____
Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of Secured Claim: \$ _____  Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). 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: \$ _____		<div style="text-align: center;">             Cliffs POC            00996         </div>
*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.		
6. Credits. 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.  
(Attach copy of power of attorney, if any.)

☐ I am the trustee, or the debtor, or their authorized agent.  
(See Bankruptcy Rule 3004.)

☐ I am a guarantor, surety, indorser, or other codebtor.  
(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: \_\_\_\_\_


Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address and telephone number (if different from notice address above):

\_\_\_\_\_

\_\_\_\_\_

 5/24/2012  
(Signature) (Date)

**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:**

g. Creditor's Signature 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.

The Honorable John E. Waites, Chief Judge, The U.S. Bankruptcy Court, District of South Carolina

Case # 12-01230 Proof of Claim

Action requested: Breach of Contract. Award \$229,000.00 to Ben and Jo Ann Shanley, creditors, Lot 23, Section 5, The Cliffs at Keowee Springs to provide infrastructure as contracted by Debtor, The Cliffs at Keowee Springs, LLC

Evidence provided:

- 1). The Cliffs Communities Real Estate Sale and Purchase Agreement stating infrastructure improvements. Ref. section 3-3.1 and 3.2.
- 2). Ben and Jo Ann Shanley's Closing on Dec. 1, 2010 Hud 1 Attachment for above property showing infrastructure escrow account disbursement for benefit, directly associated, with lot 23, section 5 of Keowee Springs.
- 3). Email correspondence from Brian Kernaghan, Nexsen Pruet, LLC evidencing receipt of deposit of 10,000.00 on December 6, 2010, for the Cliffs Infrastructure Escrow account held by said company. Balance is a little over \$229,000.00 for roads, water, and applicable drainage facilities.
- 4). Email from Richard Hubble, Suntxurbana. We are at the mercy of "sales of lots" and Suntxurbana. Suntxurbana may decide to abandon phase 5, of Keowee Springs, thus extending indefinitely, completion of infrastructure for phase 5 of Keowee Springs. In casual conversation, Mr. Hubble estimated around 300,000.00 for completion of infrastructure for phase 5. That is a best estimate, otherwise, I would not have one.

Please consider taking the above action to insure that we get fulfillment of the contract, entered in good faith, for infrastructure with the Debtor. We have presented a paper trail to show the intent of the Debtor and Creditor, the money for infrastructure exist and is accountable, a reasonable estimate of cost, and an argument that the money should serve its intended purpose as stated in the Real Estate Agreement for Lot 23, Section 5. This action by the Court, would fulfill a portion of the Breach of Contract by the Debtor for the contractual obligation to complete basic improvements such as, paved roads, water service, electrical and telephone. These contractual, mutually agreed upon, minimum improvements deter our usage, pleasure and enjoyment of our lot and lake. We can not make future plans for our home on the lot, until the infrastructure is funded by Suntxurbana. I do not feel that spending for infrastructure in phase 5 is of utmost importance to Suntxurbana. Thank you for your time and consideration.

Ben and Jo Ann Shanley

**THE CLIFFS COMMUNITIES**  
**REAL ESTATE SALE AND PURCHASE AGREEMENT**

THIS REAL ESTATE SALE AND PURCHASE AGREEMENT (the "Agreement") made by and between the below named seller (the "Seller") identified on the Seller's signature page below (the "Seller"), whose mailing address is as set forth on page 6, and the below-named purchaser (the "Purchaser") identified on the Purchaser's signature page below.

**Part I.**  
**Identifications**

**A. The Lot and What is Included in Price.** The property to be purchased (the "Lot") is located in **Section 5, Lot 23, Cliffs at Keowee Springs**. The purchase of the Lot does not include a membership in the Golf & Country Club (the "Club"), which is reserved solely to its members in accordance with the use rights conferred by the Club Membership Plan for the categories and classifications of membership offered. Seller does not operate the Club. The Club is operated by The Cliffs Club & Hospitality Group, Inc.

Check one of the following:

☒ JA (Initial) If checked and initialed, Purchaser wishes to acquire a membership in the Club, either a Cliffs Family Membership, a Cliffs Wellness Membership or a Cliffs Golf Membership. Purchaser is guaranteed the availability of a Club membership under the Membership Plan only if Purchaser acquires one within 30 days following Purchaser's Closing.

☐ \_\_\_\_\_ (Initial) If checked and initialed, Purchaser does not wish to acquire a membership in the Club at this time. Purchaser understands that membership is subject to availability at the time Purchaser may wish to acquire one, and is not guaranteed.

**B. Purchase Price and Payment.** The Lot "Purchase Price" is calculated and payable as follows:

Lot Purchase Price: \$425,000

(i) ☐ \_\_\_\_\_ (Initial) Wellness Membership Deposit. If checked and initialed, Purchaser has checked the first box in A above and wishes to acquire Wellness Membership privileges, **paying at the Closing an amount of:**

\$

(ii) ☐ \_\_\_\_\_ (Initial) Family Membership Deposit. If checked and initialed, Purchaser has checked the first box in A above and wishes to acquire Family Membership privileges, **paying at the Closing an amount of:**

\$

(iii) ☒ JA (Initial) Golf Membership, Initiation Deposit. If checked and initialed, Purchaser has checked the first box in A above and wishes to acquire Golf Membership privileges, **paying at the Closing an amount of:**

(iv) **SUB-TOTAL**, Purchase Price of Lot plus Membership Deposit Due at Closing: \$0

(v) **Initial Earnest Money Deposit.** An Earnest Money Deposit paid to Escrow Agent \$425,000  
herewith: \$25,000

(vi) **Additional Deposit Due.** An additional Earnest Money Deposit due Escrow Agent \$0  
within 30 days of the Effective Date hereof:

(vii) **Balance at Closing.** The balance required at Closing in cash or certified funds (not \$400,000  
including all of Purchaser's closing costs, prepaids, and escrow deposits):

*See next page #2 section 3 - 3.1 - 3.2*

C. **Escrow Agent.** The "Escrow Agent" is Olson, Smith, Jordan & Cox, Attorneys at Law, whose address is set forth in Section 9.4 of Part I below; and all deposits to Escrow Agent should be made payable to **Olson, Smith, Jordan & Cox Escrow Account.**

## **Part II.**

### **Terms and Conditions**

For and in consideration of the Purchase Price set forth in Part I hereof and the mutual promises contained in this Agreement, Purchaser agrees to buy and Seller agrees to sell the Lot, conditioned upon there having not been a sale to a third party prior to the receipt of this Agreement by Seller, properly executed by Purchaser, together with the Earnest Money Deposit as provided in Part I, and execution hereof by Seller.

1. **The Purchase Price.** Purchaser will pay the Purchase Price of the Lot set forth in Paragraph B of Part I of this Agreement.

1.1 **Earnest Money Deposit.** The Escrow Agent will receive the Earnest Money Deposit set forth in Paragraph B of Part I, and will deposit said sums in its non-interest bearing escrow account, to be held by the Escrow Agent as the Earnest Money Deposit to be disbursed in accordance with this Part II. In the event of a termination of this Agreement under this Part II, except in the event of Purchaser's default (in which event the Earnest Money Deposit will be paid over to Seller as herein provided), all of the Earnest Money Deposit will be refunded to Purchaser without interest.

1.2 **Payments at Closing.** The Purchase Price, together with all of Purchaser's Closing costs, prepaids, and Closing escrow deposits, less the sum of Purchaser's Earnest Money Deposit, will be paid by Purchaser in cash or by certified, collected funds at the Closing hereinafter referred to.

## **2. Financing**

2.1 **No Financing Contingency.** Purchaser acknowledges that this Agreement is not contingent upon Purchaser obtaining financing for the purchase of the Property. Seller makes no representations as to the availability or terms of financing, and the duties of Purchaser and Seller hereunder are not contingent upon Purchaser obtaining financing, or obtaining financing with any specific terms or conditions.

2.2 **Purchaser's Responsibility.** Purchaser is responsible for obtaining desired financing for the purchase of the Lot. By suggesting a source of financing and/or providing the application for such financing, Seller will not be deemed to have assumed any responsibility for obtaining such financing for Purchaser or to represent or warrant that such financing will be available to Purchaser. Purchaser represents that Purchaser has the financial means to purchase the Lot. Purchaser shall fully cooperate with Seller in procuring any evidence Seller reasonably requests that Purchaser has the financial means to pay the balance of the Purchase Price. Purchaser hereby gives Seller or Seller's designated agent permission to obtain one or more credit reports on Purchaser prior to the Closing Date. If Purchaser elects to obtain financing for the purchase of the Lot, Purchaser shall promptly apply for such financing and promptly deliver a loan commitment from an institutional lender to Seller. If Purchaser is not financing the purchase of the Lot, Purchaser shall promptly deliver account verifications to Seller upon Seller's request. If Seller determines, at any time prior to the Closing Date, in Seller's sole but reasonable discretion, that it is unlikely that Purchaser will be able to pay the balance of the Purchase Price on the Closing Date, Seller may terminate this transaction, and the Earnest Money Deposit shall be returned to Purchaser.

## **3. Completion of Infrastructure Improvements**

3.1 **Completion of Infrastructure.** Seller agrees to provide roads and water service, and public utilities will provide electrical service and telephone service at no cost to Purchaser, as outlined in our Department of Housing and Urban Development ("HUD") Property Report made effective June 15, 2010, which is incorporated herein and made a part hereof by this reference. In all events, Seller agrees that Seller will complete the water and road

infrastructure to Purchaser's Lot within the periods of time set forth in the Property Report, or, (a), in the case of water supply installation, on or before issuance of a certificate of occupancy for Purchaser's residence; and (b), in the case of paved roads to Purchaser's Lot, within sixty (60) days following Purchaser's notice to Seller that Purchaser has received a final certificate of occupancy for Purchaser's residence, whichever respective date occurs first. Seller will, at Seller's sole cost and expense, provide on-site water for construction of Purchaser's residence if water service is not then available at Purchaser's Lot. Seller's obligation to complete the roads, water service, and electrical and telephone services within the time provided in the HUD Property Report is subject only to circumstances beyond Seller's control, such as acts of God, strikes, material shortages and other occurrences which are sufficient to constitute impossibility of performance under South Carolina law. In the event of such occurrences, Seller will proceed to completion within a reasonable time after the abatement of the event causing delay. In case the survey by which Seller will convey the Lot to Purchaser required bonding pursuant to Pickens County ordinance, Seller has posted a cash or surety bond or an irrevocable letter of credit issued on Seller's behalf to Pickens County, South Carolina, guaranteeing the completion of those roads and other infrastructure requiring bonding. If the approval of the survey by which Seller will convey the Lot to Purchaser did not require bonding by Pickens County ordinance, Seller has established one or more completion escrow accounts to assure completion of the water service and roads to the lots shown on that survey. Seller reserves the right to furnish Purchaser temporary easements for ingress and egress during development, and upon completion of permanent roads or rights-of way providing ingress and egress, the temporary easements will automatically expire.

**(a) Installation of Infrastructure to Boundary of Lot.** With respect to completion of installation of roads and water service, as well as the installation of electrical and telephone services, Seller covenants these utilities and improvements will be brought to the boundary of Purchaser's Lot, not within the Lot lines to Purchaser's home. Therefore, all costs to connect such utilities or improvements to Purchaser's home will be Purchaser's sole obligation, and the electric utility company charges a set-up fee in conjunction with setting utility meters.

**(b) Septic System.** Purchaser will be responsible for installing and maintaining a septic tank system on the Lot when a dwelling is built on it. Purchaser will be required to make all arrangements for the permitting, governmental approval and installation of a septic tank system. In the event the Lot has not been previously tested and approved by the South Carolina Department of Health and Environmental Control for the installation of an individual sewage disposal system, and if Seller is then not able to resolve the issue within sixty (60) days following notice thereof, Seller will refund to Purchaser the Purchase Price and Purchaser will convey the Lot back to Seller, and thereafter, each of Seller and Purchaser will be fully released from any further liability to the other.

**3.2 Completion of Other Infrastructure; Conveyance or Turnover to a Property Owners' Association.** In addition to the infrastructure we are obligated to complete, as provided in Section 3.1 above, Seller agrees to complete construction and installation of approximately 15 miles of roads, constructed to governmentally-approved standards; drainage systems; water delivery system pipes leading to Purchaser's Lot; and main electrical power feeds to the project, which will allow those public utilities serving Purchaser's Lot to extend service to the Lot; and manned and unmanned gate houses accessing the project; and approximately 5 miles of hiking and nature trails. The utility facilities will be turned over to the applicable utility company upon completion of construction and issuance of operating permits therefore, if any, and the constructed roads, drainage systems, gates and gatehouses, and hiking and nature trails will be conveyed or turned over to the Cliffs at Keowee Springs Owners' Association on or before the expiration of two years from completion of construction, as set forth in the Declaration of Covenants, Conditions and Restrictions for the Cliffs at Keowee Springs; provided, however, the obligation for maintenance, repair and replacement of the Common Areas will become the responsibility of the Cliffs at Keowee Springs Owners' Association and its Members the date all required certificates or permits of occupancy or use are issued therefore, or the date such improvements may be used in the manner and for the purposes for which they are constructed, whichever is earlier.

#### **4. Recorded Covenants.**

**4.1 The Declaration of Covenants & Property Owners' Association.** The Lot will be conveyed subject to the Declaration of Covenants, Conditions and Restrictions for the Cliffs at Keowee Springs recorded in the Office of Register of Deeds for Pickens County, as the same may be amended from time to time (herein, sometimes referred to as

the "Declaration"), which includes the obligation that Purchaser pay regular and special assessments when levied for the common facilities and services of the Cliffs at Keowee Springs Owners' Association (herein, sometimes referred to as the "Association") commencing with the date Seller conveys title to the Lot. Purchaser hereby acknowledges having received a copy of the Declaration, with appended Bylaws of the Association.

**4.2 Architectural Review.** Purchaser hereby acknowledges that any improvement to the Lot, including landscape improvements, will be subject to the architectural guidelines established, from time to time, pursuant to the Declaration, and the prior written approval thereof by the architectural review committee established thereunder. Purchaser and Purchaser's builder will be solely responsible for the completion of construction of all improvements on the Lot and for proper drainage during and after house construction, as well as the published fee payable to architectural review committee for review and approval, prior to construction, of all construction and design plans with respect to any improvements to be placed on Purchaser's Lot. Either Purchaser or Purchaser's contractor will also be responsible for posting a bond prior to commencing construction.

**4.3 Size of Residence.** Purchaser also acknowledges that the Declaration requires minimum square footages for residences constructed within Keowee Springs based upon the area in which Purchaser's Lot is located. See Declaration and applicable amendments, if any, with respect to the application of such minimums.

**5. The Golf & Country Club.** Purchaser acknowledges the plan of development for the various Cliffs communities includes the Club's operation of various commercial, private golf and country club facilities. Purchaser further acknowledges that the Club's recreational facilities are operated by The Cliffs Club & Hospitality Group, Inc., a related third party of Seller, as a commercial business, and not as a non-profit enterprise, that Purchaser will have a license to use the facilities as herein described if Purchaser acquires a membership to do so, and that neither Purchaser nor any property owner association of which Purchaser may be a member has or will receive any ownership interest in the Club's facilities by virtue of Purchaser's acquisition of the Lot or membership in any such property owner association. The Club may, but will not be required to, add additional recreational facilities in the future. The Club operates and offers membership opportunities pursuant to a published Membership Plan, which the Club may supplement, amend, delete and change in its sole discretion at any time. If Purchaser wishes to become a member, Purchaser should take the time to read the Membership Plan prior to acquiring a membership. Purchaser acknowledges receiving a summary of The Cliffs Club membership opportunities. Such information is summary only, and Purchaser should refer to the Membership Plan for the actual terms and condition applicable to membership in the Club.

**6. Closing.** The sale and purchase contemplated by this Agreement will be closed by delivery to Purchaser of a properly executed and acknowledged general warranty deed, in proper, recordable form, in exchange for payment to Seller of the Purchase Price as hereinabove provided. Notwithstanding any provisions herein to the contrary, the legal description for Purchaser's Lot will be in accordance with and based upon the approved, bonded plat for the subdivision of which the Lot is a part (the "Plat").

**6.1 Deed to Lot.** The general warranty deed will convey to Purchaser a good and marketable or insurable (at regular rates), fee simple title to the Lot subject to matters of record, including, but not limited to, taxes and assessments not yet due, all special easements, restrictions and conditions shown and noted on the Plat, licenses and easements for utilities serving the property, the Declaration and the Bylaws of the Association, applicable ordinances and all other easements, rights-of-way, restrictive or utility easements, restrictions, covenants, affirmative obligations and conditions of record in the office of Register of Deeds.

If a title insurance company which is a member of the American Land Title Association will issue a binder to issue an owner's title insurance policy at Purchaser's expense, insuring the title to the Lot at regular rates in an amount equal to the Purchase Price (which owner's title insurance policy will have as exceptions only standard exceptions and those exceptions as are herein agreed and set forth), Seller will be deemed to be able to convey a marketable title in fee simple. If, at the Closing, Seller cannot deliver a general warranty deed to the Lot subject to the exceptions above, Seller will have the right to extend the Closing for an additional thirty (30) days to comply with the terms of the title policy.

6.2 **Closing Date and Time.** Closing will be conducted in the manner provided hereinafter, on the "Closing Date" set forth on Purchaser's signature page below, at the location set forth in Section 6.3 and at a time selected by Seller. Provided that Seller has fulfilled all of its obligations to Purchaser pursuant to this Agreement, Purchaser's failure or refusal to close at the time, place and date provided may, at Seller's option, be deemed a default by Purchaser.

6.3 **Closing Location.** Tender of the deed by Seller and the performance of Seller's requirements will be made at the Closing location designated by Seller on or before 10 days prior to the scheduled Closing. In no event will delivery of the deed exceed one hundred eighty (180) days from the date of Purchaser's execution of this Agreement. The Closing may take place in escrow, with Purchaser participating by making all deliveries required to be made by mail to the Closing attorney prior to the Closing date, instead of in person; provided that all funds to be received from Purchaser on the Closing date, whether in person or by mail, must be in cash or certified, collected funds.

6.4 **Closing Costs.** Seller will pay for the preparation of the deed and the deed transfer fee required to record the deed, and Seller's attorney's fees. Purchaser shall pay for any and all other Closing costs, including but not limited to, loan service and origination fees, credit report and underwriting fees, appraisal expenses, recording fees, prepaid items, and title insurance premiums, and Purchaser's attorney's fees. A working capital contribution equal to two-months' Association assessments shall be paid to the Association, as provided in the Declaration.

(a) **Prorations at Closing.** Taxes and the Association's assessments will be prorated between Seller and Purchaser as of the date of closing, based upon information then available. Seller and Purchaser agree to adjust any such prorations following the Closing, as may be required by receipt of final bills therefor.

## **7. Defaults.**

7.1 **Default by Purchaser.** In the event Purchaser defaults in the performance of any of Purchaser's obligations pursuant to this Agreement and Seller is not in default, Seller will have the right to specifically enforce this Agreement according to its terms and/or to pursue any and all other remedies available to Seller at law or in equity, or Seller will, at Seller's election, be released from any further obligations to Purchaser pursuant to this Agreement and in such event will be entitled to retain the Earnest Money Deposit (but not exceeding 10% of the Purchase Price) as agreed liquidated damages, it being the intention and agreement of Seller and Purchaser that the amount of such Earnest Money Deposit will act as a fair measure of compensation for actual damages incurred by Seller as a result of Purchaser's default. However, notwithstanding the provisions of this Section 7.1, Seller expressly agrees that Seller will give Purchaser written notification of Purchaser's default or breach of contract and the opportunity to correct the default or breach within twenty (20) days following the receipt of Seller's notice.

7.2 **Default by Seller.** If Seller defaults in the performance of any of Seller's obligations as set forth in this Agreement and such default is not cured within twenty (20) days after written notice of default is given to Purchaser by Seller, Purchaser's sole remedy will be to rescind this Agreement and receive the immediate return of Purchaser's Earnest Money Deposit, pay Purchaser's reasonable attorney's fees for any title examination by Purchaser's attorney and for such other reasonable closing expenses which Seller agrees, in its sole discretion, to pay; provided, however, that in the event of a non-material breach of any term or condition of this Agreement, Purchaser's remedies will not include termination of this Agreement.

8. **Real Estate Commission.** It is understood that Seller has by separate agreement appointed Cliffs Real Estate, Inc. as the exclusive real estate agent for sales of Lots within the Cliffs at Keowee Springs. Purchaser warrants and represents that, except as set forth to the contrary on the signature page of Purchaser, Purchaser has not dealt with any other real estate agent who may be entitled to claim a real estate commission in this transaction.

## **9. Miscellaneous.**

9.1 **Seller's Reserved Easements; Construction Setbacks.** Purchaser acknowledges that Seller reserves the right to grant and/or reserve, in its reasonable discretion, various easements for ingress and egress, maintenance and use on and over the Lot and the remainder of the Cliffs at Keowee Springs development. No such easement will



materially reduce the value or the usefulness of Purchaser's Lot. Furthermore, Purchaser's Lot is subject to front, rear and side lot line easements shown on the Plat and/or set forth in the Declaration, which also constitute construction setback limits.

**9.2 Seller's Adjacent Development.** Except as otherwise provided herein and notwithstanding any statements contained in this Agreement or otherwise to the contrary, Seller does not warrant in any manner whatsoever the development of any other properties which are owned by Seller in Pickens County, South Carolina, whether or not in the general vicinity of Purchaser's Lot, and Seller reserves the right to develop such properties, if developed, in any manner whatsoever without interference from any subsequent grantee of the Purchaser's Lot, notwithstanding any plans, renderings or drawings which may have been brought to the Purchaser's attention through public zoning hearings, documents filed for zoning purposes, public or private showings or proposed or preliminary development plans or references therein in any recorded covenants. There is no assurance that any facilities or amenities shown for planning or proposed development purposes will ever be constructed, except only those which Seller herein covenants to complete or which are disclosed to be completed in the HUD Property Report for the Lot.

**9.3 As-is Condition.** Except as otherwise provided herein, Purchaser is purchasing and Seller is selling the Lot in an "AS IS" condition.

**9.4 Notices.** Any and all notices or other communication provided for in this Agreement will be given in writing and delivered by personal delivery or by registered or certified mail, first class postage prepaid, or by facsimile transmission. Any notice mailed in accordance with this Section 9.4 will be deemed received upon actual receipt thereof or after the expiration of five (5) days, whichever is earlier. Notice sent by facsimile transmission will be deemed received on the date of its transmission, provided transmission occurs prior to 5:00 p.m., Eastern Time, and the sender retains proof of its transmittal and receipt without error. Notice will be addressed as follows:

If to Seller:

The Cliffs at Keowee Springs, LLC  
3598 Highway 11  
Travelers Rest, SC 29690  
Attention: Marty Ritsch  
FAX: 864-371-1542

If to the Escrow Agent:

Olson, Smith, Jordan & Cox  
PO Box 1633  
Clemson, South Carolina 29633  
Attention: Chris Olson, Esq.  
FAX: 864-654-3696

If to Purchaser: As set forth on Purchaser's signature page of this Agreement

The notice requirements of this Section 9.4 do not apply to the Purchaser's right to cancel this Agreement as provided on page 8 below and in accordance with the Interstate Land Sales Full Disclosure Act.

**9.5 Purchaser's Acknowledgment Concerning Representations.** Purchaser understands that any sales associate or other person representing Seller in this transaction does not have the authority to make any statements in conflict with or in addition to the information contained in this Agreement, and any other documents received from Seller, including without limitation, any representation made regarding the resale of Purchaser's Lot or its rental or investment potential, and that Seller, for itself and on behalf of any such agent, specifically disclaims any responsibility for such statements. Further, if any such statements were made, Purchaser acknowledges that by execution of this Agreement, Purchaser affirms that Purchaser has not relied upon any such statements, if any, and waives any rights that Purchaser might have as a result of such statements unless they are incorporated in this Agreement.

9.6 **Documents Received By Purchaser.** Purchaser further acknowledges having received and reviewed prior to the execution of this Agreement the following:

- (a) Copy of the Declaration, as supplemented and amended to the date hereof, together with appended By-Laws of the Association.
- (b) Copy of Plat.
- (c) Design and Construction Guidelines.
- (d) The checked documents or instruments listed on the Purchaser's signature page below.

9.7 **Time is of the essence.** It is expressly understood and agreed that TIME IS OF THE ESSENCE as to all obligations hereunder, including the Purchaser obligation to obtain a mortgage commitment and provide the Lender with all information requested if Purchaser is acquiring financing, even though such financing is not a contingency hereof.

9.8 **Entire Agreement.** Seller and Purchaser covenant and agree with each other that this written instrument, executed in duplicate originals, expresses the entire agreement between them and there is no other agreement, oral or otherwise, varying or modifying the terms of this Agreement.

9.9 **Modification of Agreement.** This Agreement may not be otherwise changed or modified, absent some subsequent written instrument executed by both Seller and Purchaser.

9.10 **Interpretation Presumption.** Seller and Purchaser represent and warrant to one another that each has, by counselor otherwise, actively participated in the finalization of this Agreement, and in the event of a dispute concerning the interpretation of this Agreement, each hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the document.

9.11 **Binding Effect; Assignment.** This Agreement is binding upon the parties' respective heirs, devisees, personal representatives, successors and assigns; provided however, this Agreement and any of Purchaser's rights hereunder may not be assigned by Purchaser.

9.12 **Resale Or Exchange Of Property.** Seller has no program or provision for the sale or exchange of any Lots in the Cliffs at Keowee Springs. There is no program, which assures that Purchaser will be able to exchange the Lot for other property.

9.13 **Unenforceable Provisions.** Should any provision of this Agreement be void or become unenforceable at law or in equity, the remaining provisions will remain in full force and effect and will not in any manner be thereby affected or impaired.

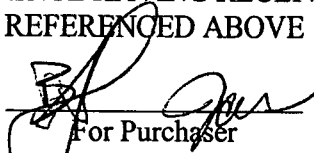
9.14 **Survival.** This Agreement and all the terms and conditions hereof will survive the Closing of the transaction contemplated hereby and will thereafter continue to bind the parties to this Agreement.

9.15 **Counterpart Execution of Agreement.** This Agreement may be signed by each of the parties upon a separate copy, and in such case one counterpart of this Agreement will consist of enough of such copies to reflect the signature of each. For purposes of this Agreement, a telecopy of an executed counterpart will constitute an original. Any person delivering an executed counterpart of this Agreement by telecopy will also deliver an original, executed counterpart of this Agreement, but the failure to deliver an original, executed counterpart will not affect the validity of this Agreement. This Agreement may also be executed in two or more counterparts, each of which will be deemed an original; but for purposes of proving the Agreement, it will not be necessary to produce or account for more than one such counterpart.

9.16 **Effective Date.** This Agreement will become effective, and the term "Effective Date" herein will mean, the last date executed by a party to be bound hereby.

9.17 **Receipt of Agency Disclosure.** RECEIPT AND EXPLANATION OF THE AGENCY DISCLOSURE FORM IS HEREBY ACKNOWLEDGED BY PURCHASER'S INITIALS BELOW THIS SECTION AND BY PURCHASER'S EXECUTION OF THIS AGREEMENT.

PURCHASER'S INITIALS HERE TO EVIDENCE HAVING RECEIVED THE AGENCY DISCLOSURE FORM REFERENCED ABOVE

  
For Purchaser

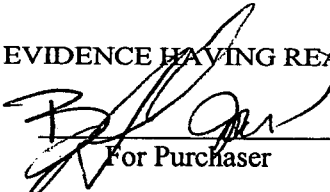
9.18 **Radon Disclosure.** The U.S. Environmental Protection Agency, the U.S. Department of Health and Human Services, and the U.S. Public Health Service have expressed concern over the presence of radon gas in homes. Prolonged exposure to high levels of indoor radon or its progeny may affect the health of residents. Although such conditions may exist at the community, Seller has made no investigation to determine whether radon gas is or will be present in a premises constructed on a lot within the community, and the Seller makes no representation or warranty as to (a) the presence or lack of radon or hazardous environmental conditions nor (b) the effect of radon or any such condition on the regime.

Seller recommends that the Purchaser, at its sole expense, conduct its own investigation and consult with such experts as the Purchaser deems appropriate in order to determine if radon gas may be or will be present in a residence and the level thereof.

For further information on radon, see the EPA's "A Citizen's Guide to Radon: The Guide to Protecting Yourself and Your Family from Radon," a copy of which may be found at <http://www.epa.gov/radon/pubs/citguide.html#overview>.

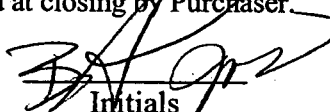
By signing below Purchaser acknowledges that he or she has read the foregoing Disclosure Statement, and hereby releases Seller from any and all liability with respect to the above matters.

PURCHASER'S INITIALS HERE TO EVIDENCE HAVING READ THE RADON DISCLOSURE ABOVE

  
For Purchaser

9.19 **Boat Dock Permit Notice.** If the lot being purchased is a lakefront lot the Purchaser may apply for a permit to install a dock on the property. The issuance of a dock permit by the Lake Management authorities is not guaranteed, and the requirements for the issuance of a permit and the existing conditions of the property can change over time.

☒ Check here if Purchaser wishes to receive approval prior to Closing, Seller will begin the permitting process for the Purchaser and upon receipt of the permit's approval Seller will transfer the permit to the Purchaser at Closing. The cost for the permit shall be paid at closing by Purchaser.

  
Initials

(BALANCE OF PAGE PURPOSELY BLANK)

**HUD-1 Attachment**

**Borrower(s):** Benedict J. Shanley and Jo Ann Shanley  
2055 Sugarloaf Club Drive  
Duluth, GA 30097

**Seller(s):** The Cliffs at Keowee Springs, LLC  
3598 Highway 11  
Travelers Rest, SC 29690

**Lender:** The Coca-Cola Company Family FCU  
**Settlement Agent:** Smith, Jordan, Lavery & Lee, PA  
(864)654-3680

**Place of Settlement:** P.O. Box 1633  
Clemson, SC 29633

**Settlement Date:** November 30, 2010

**Property Location:** Lot 23 Phase 5 Keowee Springs  
Six Mile, SC 29682  
Pickens County, South Carolina  
Lot 23 Phase 5  
The Cliffs at Keowee Springs

**Additional Disbursements**

Payee/Description	Note/Ref No.	Borrower	Seller
Cliffs at Keowee Springs Owners Association Reserv Working Capital		148.33	
Upstate Forever Charity Donation			5,616.00
Cliffs Club & Hospitality Group, LLC Membership Fee	POCS \$75,000		25,000.00
Cliffs Club & Hospitality Group, LLC Club Credit			25,000.00
The Cliffs at Keowee Springs Golf & Country Club Membership Access Fee			34,000.00
Nexsen Pruet, LLC Infrastructure Escrow	David Gossett		10,000.00
Pickens County Treasurer 2010 County Taxes	4140-00-14-2051		86,549.59
<b>Total Additional Disbursements shown on Line 1305</b>		<b>\$ 148.33</b>	<b>\$ 186,165.59</b>

**Adjusted Origination Charge Details**

<b>Origination Charge</b>	
Origination Charge	550.00
to The Coca-Cola Company Family FCU	
Processing Fee	300.00
to The Coca-Cola Company Family FCU	
Underwriting Fee	400.00
to The Coca-Cola Company Family FCU	
<b>Total</b>	<b>\$ 1,250.00</b>

**Origination Credit/Charge (points) for the specific interest rate chosen**

**Total** \$

**Adjusted Origination Charges** \$ **1,250.00**

**Title Services and Lender's Title Insurance Details**

	BORROWER	SELLER
Title Binder	100.00	
to Easley Title		
Title Search	175.00	
to Foothills Abstractors		

**WARNING:** It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

## **JoAnn and Ben Shanley**

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**From:** "Kernaghan, Brian F." <BKernaghan@nexsenpruet.com>  
**To:** <J3BShanley@BellSouth.net>  
**Sent:** Monday, May 21, 2012 3:50 PM  
**Subject:** Cliffs at Keowee Springs  
Joanne,

This confirms our telephone conversation today concerning the Cliffs Infrastructure Escrow held by Nexsen Pruet, LLC. I confirmed to you our receipt and deposit of \$10,000 on December 6, 2010. The account is currently frozen on Order of the Bankruptcy Court. The current balance in the account for Cliffs at Keowee Spring infrastructure (roads, water and applicable drainage facilities) is a little over \$229,000.00.

Regards,

**Brian Kernaghan**  
Direct: 843.213.5404  
[BKernaghan@nexsenpruet.com](mailto:BKernaghan@nexsenpruet.com)

[www.nexsenpruet.com](http://www.nexsenpruet.com)

**NEXSEN PRUET**

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**JoAnn and Ben Shanley**

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**From:** "Richard Hubble" <hubble@suntxurbana.com>  
**To:** <j3bshanley@bellsouth.net>; <bshanley@coca-cola.com>  
**Sent:** Thursday, May 03, 2012 6:45 PM  
**Subject:** Cliffs Keowee Springs lot trade

Mr. and Mrs. Shanley,

Sorry to have taken so long to get back to you. Brett got tied up on larger matters in Dallas and did not make it to Greenville until this week. We have also been rethinking the idea of abandoning the plat for the Phase 5 lots, since we have such a low inventory of lakefront company lots. And since you have already spent so much time, effort and money getting your lot and dock set up the way you like it, we have decided not to pursue lot trades at this time. Thank you for your time a couple of weeks ago and I think that the focus of attention brought to Phase 5 by this exercise will result in completion of infrastructure sooner than I had originally thought. It still won't happen in 2012 or 2013, but I can see it happening by 2014, provided sales go as planned.

We look forward to clearing of the waters around the Cliffs over the next few months and things moving in a positive direction by Fall.

Richard Hubble  
864/414-5067 cell  
[hubble@suntxurbana.com](mailto:hubble@suntxurbana.com)



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**Richard Hubble**  
c 864.414.5067  
[hubble@suntxurbana.com](mailto:hubble@suntxurbana.com)  
[www.suntxurbana.com](http://www.suntxurbana.com)

