

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

**In re:**

**The Cliffs Club & Hospitality Group, Inc., *et al.*,<sup>1</sup>  
*d/b/a* The Cliffs Golf & Country Club,**

**Debtors.**

**CHAPTER 11**

**Case No. 12-01220**

**Jointly Administered**

**DEBTORS' RESPONSE TO LETTER FROM MR. MARK BRODY**

COME NOW The Cliffs Club & Hospitality Group, Inc. and its affiliated debtors in the above-captioned Chapter 11 cases, as debtors and debtors-in-possession (collectively, the "Debtors"), by and through undersigned counsel, and hereby respond (this "Response") to a letter from Mr. Mark Brody ("Mr. Brody") to this Court, which letter was filed as Docket Entry No. 200 and styled as a motion for relief (the "Brody Motion"). This Court set a status conference on the Brody Motion at the April 10, 2012 omnibus hearing in these jointly administered cases. In support of this Response, the Debtors respectfully represent as follows:

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<sup>1</sup> The Debtors, followed by the last four digits of their respective taxpayer identification numbers and Chapter 11 case numbers, are as follows: The Cliffs Club & Hospitality Group, Inc. (6338) (12-01220); CCHG Holdings, Inc. (1356) (12-01223); The Cliffs at Mountain Park Golf & Country Club, LLC (2842) (12-01225); The Cliffs at Keowee Vineyards Golf & Country Club, LLC (5319) (12-01226); The Cliffs at Walnut Cove Golf & Country Club, LLC (9879) (12-01227); The Cliffs at Keowee Falls Golf & Country Club, LLC (3230) (12-01229); The Cliffs at Keowee Springs Golf & Country Club, LLC (2898) (12-01230); The Cliffs at High Carolina Golf & Country Club, LLC (4293) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC (6559) (12-01234); The Cliffs Valley Golf & Country Club, LLC (6486) (12-01236); and Cliffs Club & Hospitality Service Company, LLC (9665) (12-01237).

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Response under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

### **BACKGROUND**

2. On February 28, 2012 (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

3. On March 12, 2012, the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Committee”) in these Chapter 11 cases pursuant to that certain Fourth Amended Appointment of Committee of Unsecured Creditors [Docket Entry No. 141]. No trustee or examiner has been appointed in these Chapter 11 cases.

4. The Debtors are authorized to operate their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. A description of the Debtors’ businesses, the reasons for filing these Chapter 11 cases, and the relief sought from this Court to allow for a smooth transition into operations under Chapter 11 are set forth in the Declaration of Timothy P. Cherry in Support of First Day Motions (the “Cherry Declaration”), which has been filed with the Court [Docket Entry No. 44].

### **RELIEF REQUESTED**

6. The Debtors submit this Response in aid of the status conference before this Court set for April 10, 2012. The Debtors reserve the right to assert any additional substantive responses to the Brody Motion in advance of any contested hearing on this matter.

7. At present, the Debtors do not contest Mr. Brody’s assertion that certain non-debtor entities and Mr. James B. Anthony (“Mr. Anthony”), the principal equity holder in the Debtors’ ultimate parent company (The Cliffs Communities, Inc., a non-debtor), entered into an

agreement with Mr. Brody whereby, among other things, Mr. Brody received rights to play a set number of rounds of golf per year at one or more of the Debtors' golf clubs. Prior to the Petition Date, the Debtors honored this agreement, and reflected in their books and records that Mr. Brody held an honorary social membership at the golf club owned by The Cliffs at Glassy Golf & Country Club, LLC ("Glassy"), a Debtor. Mr. Brody's honorary membership agreement (the "Agreement") is reflected on Schedule G of Glassy's schedules of assets and liabilities filed with this Court on March 30, 2012. A true and correct copy of the Agreement, along with certain related correspondence and documents, is attached hereto as Exhibit A.

8. Per the Brody Motion, Mr. Brody requests that this Court order that he retain his honorary social membership and his privileges thereunder. In the alternative, Mr. Brody requests that this Court order that he be paid the sum of \$274,560, his estimate of the current value of his honorary social membership privileges. Mr. Brody is not entitled to his requested relief.

9. At most, Mr. Brody is: (a) a counterparty to an executory contract with the Debtors, subject to the Debtors' decision (or the decision of an acquirer of the Debtors' assets) to assume or reject his contract; and (b) the holder of an unsecured, contingent, and unliquidated claim against the Debtors with respect to any rights related to his honorary social membership, including a potential rejection damages claim if his honorary social membership is rejected. The Debtors' books and records reflect no amounts owing to Mr. Brody with respect to his honorary social membership, excepting only a general unsecured claim for a member account balance in the amount of \$173.29.

10. Like all honorary members in the Debtors' clubs, until a decision is made at some point in the future to assume or reject Mr. Brody's membership, Mr. Brody, subject to the terms of the Agreement, will be entitled to continue using the Debtors' facilities according to the same

terms and privileges he enjoyed prior to the Petition Date. Mr. Brody, and all similarly situated honorary members, will be provided notice of any decision made to assume or reject honorary memberships.

11. Currently, the Debtors anticipate that all membership agreements with the Debtors' clubs (honorary or otherwise) will be rejected. The Debtors do not presently know precisely how any acquirer of the Debtors' assets intends to treat honorary memberships; however, any proposed treatment of honorary memberships will be addressed in the Debtors' proposed plan of reorganization, which proposed plan will be subject to objections and approval or rejection by persons entitled to vote thereon.

12. Because the treatment of Mr. Brody's executory contract rights and potential claims is presently unknown, Mr. Brody's requested relief is premature and not ripe for consideration. Mr. Brody will be afforded the opportunity to file a proof of claim in these cases, voice his objection to any proposed plan of reorganization, and vote any valid claim he may have, with the benefit of knowing his proposed treatment in these cases.

13. Accordingly, the Debtors request that the Brody Motion be denied at this time, without prejudice to Mr. Brody's rights to assert his positions at a future point in these cases.

#### **NOTICE OF THIS RESPONSE**

14. No trustee or examiner has been appointed in these Chapter 11 cases. Notice of this Response will be served pursuant to the Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket Entry No. 121], and upon Mr. Brody. The Debtors submit that, under the circumstances, no other or further notice is required.

**NO PRIOR REQUEST**

15. No previous request for the relief sought in this Response has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Brody Motion be denied and that this Court grant such other and further relief as the Court may deem just and proper.

Dated: April 5, 2012

Respectfully submitted,

/s/ Däna Wilkinson

Däna Wilkinson  
District Court I.D. No. 4663  
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-and-

/s/ J. Michael Levengood

Gary W. Marsh  
Georgia Bar No. 471290  
J. Michael Levengood  
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*Attorneys for Debtors and Debtors in Possession*

**Exhibit A**

**THE CLIFFS GOLF AND COUNTRY CLUBS**

**Honorary Social Membership Reservation Form**

I. We would be honored to be accepted as Honorary Social Members of The Cliffs Golf and Country Club: ☒ Yes ☐ No

Please proceed with processing my, our membership: ☒ Yes ☐ No

I. We are not able to accept this invitation at the present time: ☐ Yes ☐ No

**General Information**

Name(s): Mark Brady

Mailing Address: 212 Summit

City: Greenville State: SC Zip code: 29609

Home telephone: 864-240-4289 Business telephone:

Favorite menu items:

Favorite desserts:

Favorite wines:

Signature: Mark Brady Date: 6/1/8/00

Membership account: B187

Please return to:

Mimsy DeMars  
200 Fire Pink Way  
Landrum, South Carolina 29356

MEMBERSHIP AGREEMENT  
FOR  
HONORARY MEMBERSHIP IN  
THE CLIFFS GOLF AND COUNTRY CLUB

I have received and reviewed the outline referring to the special Honorary Lifetime Membership agreement between Jim Anothony, representing Cliffs Communties, and myself. Hereto referred as page number one of this document and also signed by Mark Brody.

The Honorary Membership granted is *Honorary Social* and is provided on an agreement dated October 19, 1995. No membership fees or dues are applicable.

My rights and privileges as an Honary Lifetime Member shall only entitle Mark Brody to use the facilities at the Cliff Courses as per agreement stated above. Also the undersigned hereby acknowledges that the membership in the Cliffs Golf and Country Club or facilities provided at the Cliffs Golf and Country Club does not convey any equity or ownership interest or any other property interest in the Cliffs Golf and Country Club or the facilities provided at the Cliffs Golf and Country Club.

Membership only grants to the undersigned a non-exclusive lifetime license to use the facilities provided at the Cliffs Golf and Country Club. The specific membership privilege granted coincides with the particular agreement as stated above and is rolled into the honorary membership for accounting and bookkeeping purposes. The undersigned does not have the right to receive any of the Club's assets if dissolved.

I acknowledge and agree that as an Honorary Lifetime Member (complimentary status) and prior contractual agreement as stated above I have not paid an Initiation/ Membership Deposit or fees. In no event am I entitled to any refund of the Initiation/ membership deposit, Club Dues and Fees.

This Lifetime Membership Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina without regard to the principles of conflicts of laws.

12/16/00  
Date  
Patt M. Fero  
Vice President of Membership

11/28/07  
Mark Brody



November 15, 2000

Mr. Mark Brody  
547 Rock Bottom Road  
Sunset, SC 29685

Dear Mark,

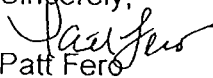
Pursuant to our recent meeting, I am writing to outline the special Honorary Membership agreement between you and Mr. Jim Anthony.

1. We have classified your membership as an Honorary Social Membership.
2. You have received a membership account that provides for you to charge your food, beverage and other purchases.
3. Through agreement dated October 19, 1995, you are provided the opportunity to play 16 times a year at the Cliffs Course (16 foursomes).
4. When playing, your guests are charged cart fees only. You do not pay cart fees. There are no unescorted guest privileges provided with this membership.
5. When playing golf, you will present a VIP card. As we discussed, this seems to be the best way to accommodate your playing times, with no confusion in the golf shop or potential embarrassment to you. Enclosed are 4 VIP cards to start with. You indicated that was sufficient for the time being. Please call me when you need more cards.

or 64  
individual  
rounds  
12/6/00

Please sign and return the enclosed Honorary Membership Agreement form. Two copies are provided. Please retain one for your records. If you have any other questions, or if I have omitted anything pertinent to this agreement, please call me.

Sincerely,

  
Patt Fero

VP Membership

November 28,2000

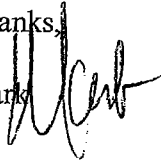
MARK BRODY  
212 Summit Drive  
Greenville,S.C. 29609  
864-240-4289

Pat,

Thanks for sending the information on the Honorary Membership. I have read over it and for the most part agree with it but made a change to reflect the agreement written October 19, 1995. Please read over it to make sure I am correct in my change. I have the agreement in a lockbox and am making change by memory, but I am sure my memory serves me correct.

Thanks,

Mark

A handwritten signature in dark ink, appearing to read 'Mark Brody', written over the printed name 'Mark'.

**November 15, 2000**  
**212 Summit Drive**  
**Greenville, S.C. 29609**

**Dear Mark,**

Pursuant to our recent meeting, I am writing to outline the special Honorary Membership agreement between you and Mr. Jim Anothony, representing Cliffs Communities.

1. We have classified your membership as an Honorary Social Membership. This makes our bookkeeping and accounting simplified.
2. You have received a membership account that provides for you to charge your food, beverage and other purchases. Also you will receive a pass for your cars to enter the Cliffs Communities
3. Through agreement dated October 19, 1995, you are provided the opportunity to play 64 rounds per year or 16 foursomes.
4. When playing, your guest are charges cart fees only. You pay no fees associated with the golf match. There are no unescorted guest privileges provided with this membership.
5. When playing golf, you will present a VIP card. Enclosed are 4 VIP cards to start with. Please call when you need more.

Please sign and return the enclosed Honorary Membership Agreement.

Sincerely,

*MB* 11.28.00

October 19, 1995

Mr. Mark Brody  
547 Rock Bottom Road  
Sunset, SC 29685

Dear Mr. Brody,

At the request of Mr. Jim Anthony, I am writing to finalize your golf access agreement for playing privileges at The Cliffs. Mr. Anthony has confirmed with me the following:

- \* You are granted 64 individual rounds per calendar year (16 foursomes)
- \* When you play - you pay nothing; your guests pay cart fee only.
- \* You must play with your guests at all times.
- \* The agreement is renewable each year as long as the present ownership structure remains the same as it is today.

*VIP cards*

Also, I enclose a vehicle identification form that entitles you to receive a sticker for your car. Ben Graydon, Director of Public Safety, will personally issue you the sticker. Please mail or return the form in person to the front gate.

If I can be of further assistance, please telephone me.

Kind regards,

Patt Fero  
Director of Club Services

# MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS that in consideration of the covenants herein and the further sum of One (1.00) Dollar, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to the cancellation of "Memorandum of Agreement" recorded in Deed Book 1453, page 889, and Brody hereby releases all his rights therein unto Developer.

Developer agrees to pay unto Brody the total sum of Two Hundred Fifteen Thousand (215,000.00) Dollars in installments to be paid as follows: Fifty Five Thousand (55,000.00) Dollars on JULY 11TH 1994: Eighty Thousand (80,000.00) Dollars on Janurary 15 1995: Eighty Thousand (80,000.00) Dollars on Janurary 15, 1996, together with interest from the Janurary 1st 1994, at the rate of ten (10) percent which said interest shall be paid on Janurary 15, 1997, the final maturity date. The sum of Thirty Three Thousand Two Hundred Fifteen & 65 cents (33,215.65) Dollars.

Time is of the essence and in the event of default, Developer will be liable for court costs and a reasonable attorney's fee in event this obligation is placed in the hands of an attorney for collection.

Brody agrees that he will have no further interest in or lien upon the real estate of the Cliffs At Glassy except as follows: the parties agree that they will mutually designate some properties of the Developer to which Developer has, in the opinion of Brody's counsel, marketable fee simple title (this property may or may not be a part of the Cliffs At Glassy). Developer will, at Developer's expense, grant unto Brody a valid first mortgage lien to secure payment of the sums set forth hereinabove. The parties further agree that this mortgage will

membership in the golf course and club facilities at the Cliffs At Glassy. This membership shall include the right to use said golf course for a total of 64 rounds or 16 forsomes at no cost:

cart fees shall be paid for all players except to Brody's cart.

There will be no monthly fee for Brody but a user fee or guest fee will be charged for any guest Brody may bring to use said other amenities. This membership shall be personal unto Brody only and

not transferrable by him. *Anyone playing To qualify for this (program) players must accompany Brody (MIBQBA)*

This document is binding as of lots being picked and assigned not to exceed 45 days from date of signing.

IN WITNESS WHEREOF, WE have placed our hands and seals this

day of 11 July, 1994.

WITNESS:

GLASSY MOUNTAIN DEVELOPMENT COMPANY  
INC.

*Carol J. Whaley*  
*Carol J. Whaley*  
*Carol J. Whaley*

*James B. Anothony*  
BY: JAMES B. ANOTHONY

ITS: *James B. Anothony*

*James B. Anothony*  
JAMES B. ANOTHONY. Individually

*Mark Brody*  
Mark Brody

*For this is a copy  
of agreement*

Document Page 16 of 16  
be a part of the Cliffs At Glassy). Developer will, at Developer's

expense, grant unto Brody a valid first mortgage lien to secure payment of the sums set forth hereinabove. The parties further agree that this mortgage will give Brody a secured position equal to at least Two Hundred Twenty Five (225) percent of the principal sum of the indebtedness hereunder.

membership in the golf course and club facilities at the Cliffs At Glassy. This membership shall include the right to use said golf course for a total of 64 rounds or 16 forsomes at no cost. ~~per year~~ cart fees shall be paid for all players except to Brody's cart. There will be no monthly fee for Brody but a user fee or guest fee will be charged for any guest Brody may bring to use said other amenities. This membership shall be personal unto Brody only and

not transferrable by him. Anyone playing To qualify for this (program) players must accompany Brody (initials)

This document is binding as of lots being picked and assigned not to exceed 45 days from date of signing.

IN WITNESS WHEREOF, WE have placed our hands and seals this

day of 11 July, 1994.

1 Jun 1996

WITNESS: *James J. Houper*

GLASSY MOUNTAIN DEVELOPMENT COMPANY  
INC.

RY: JAMES B. ANTHONY

its