UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re: **The Cliffs Club & Hospitality Group, Inc., *et al.*,[1] *d/b/a* The Cliffs Golf & Country Club,** **Debtors.**	**CHAPTER 11** **Case No. 12-01220** **Jointly Administered**

MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE FIRST AMENDED AND RESTATED JOINT CHAPTER 11 PLAN FILED BY THE DEBTORS AND THE PLAN SPONSOR

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[1] 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 (7576) (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).

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COME NOW, The Cliffs Club & Hospitality Group, Inc. and its affiliated debtors in the above-captioned Chapter 11 cases (the "Cases"), as debtors and debtors-in-possession (collectively, the "Debtors"), and hereby submit this Memorandum of Law in Support of Confirmation of the First Amended and Restated Joint Chapter 11 Plan dated June 30, 2012 [Dkt. No. 479], as amended and supplemented [Dkt. No. 616, Ex. A] (the "Plan")[2] (this "Memorandum").

In further support of confirmation of the Plan, the Debtors have filed, and rely upon, the Declaration of Balloting Agent Regarding Solicitation and Tabulation of Votes in Connection with the First Amended and Restated Joint Chapter 11 Plan Filed by the Debtors and the Plan Sponsor executed by Julia Osborne on behalf of BMC Group, Inc., as the Debtors' claims, noticing and vote tabulation agent ("BMC Group"), that provides a summary of voting on the Plan (the "Voting Summary"), as well as the Declarations of Katie S. Goodman, Chief Restructuring Officer of the Debtors, and of John Kunkel, a representative of Cliffs Club Partners, LLC (the "Plan Sponsor" or "CCP"). The Debtors request that the Court take judicial notice of the docket of the Cases maintained by the Clerk of the Court, including, without limitation, all pleadings, all documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at the hearings held before this Court during the pendency of the Cases.

The Debtors respectfully show the Court as follows:

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[2] Capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the Plan.

BACKGROUND

A. The Chapter 11 Cases

On February 28, 2012 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), thereby commencing the Cases. On February 29, 2012, the Court entered an order designating the Cases as Complex Chapter 11 Cases pursuant to SC LBR 2081-2. [Dkt. No. 51]. On March 5, 2012, the Court entered an order pursuant to Bankruptcy Rule 1015(b) Directing Joint Administration of Chapter 11 Cases under Case No. 12-01220. [Dkt. No. 89]. The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. Between March 5 and 12, 2012, the United States Trustee for the District of South Carolina (the "United States Trustee") appointed the official committee of unsecured creditors (the "Creditors' Committee") in the Cases. [Dkt. Nos. 69, 72 103, 110 and 141].

On May 22, 2012, the Debtors and the Plan Sponsor filed a Joint Chapter 11 Plan [Dkt. No. 365] and the Debtors filed a Disclosure Statement [Dkt. No. 366]. On July 1, 2012, the Debtors and the Plan Sponsor filed a First Amended and Restated Joint Chapter 11 Plan dated June 30, 2012 [Dkt. No. 468], the First Amended and Restated Disclosure Statement [Dkt. No. 469], and the Plan Supplement to the Joint Chapter 11 Plan [Dkt. No. 470]. As the Debtors and Plan Sponsor resolved objections, certain additional modifications were announced on the record during the Disclosure Statement hearing on July 2, 2012, and the Debtors filed a First Amended and Restated Disclosure Statement for the First Amended and Restated Joint Chapter 11 Plan dated June 30, 2012 (with such amendments stated on the record at the hearing held on July 2, 2012) [Dkt. No. 480] (the "Disclosure Statement"), which describes and accompanied the First Amended and Restated Joint Chapter 11 Plan of the Debtors and the Plan Sponsor

dated June 30, 2012 (with such amendments stated on the record at the hearing held on July 2, 2012) [Dkt. No. 479]. By Order entered July 2, 2012, [Dkt. No. 478] (the "Disclosure Statement Order"), the Court approved the Disclosure Statement.

B. Formation and Structure of the Debtors.

Each of the Debtors is owned, directly or indirectly, by Cliffs Communities, Inc. ("CCI"). CCI has other subsidiaries or affiliates that, on the Petition Date, were dedicated to the development and sale of residential real estate, unimproved company lots and finished homes at a number of Cliffs communities located in the States of South Carolina and North Carolina. CCI and these non-debtor affiliates are generally referred to as the Cliffs development companies or "DevCos" while the Debtors are referred to as the "ClubCos" (collectively, "The Cliffs"). One of the DevCos, namely Keowee Falls Investment Group, LLC ("KFIG"), also filed a petition for relief under Chapter 11 of the Bankruptcy Code. KFIG has filed a proof of claim as an unsecured creditor in the Cases to which the Debtors have file an objection. [Dkt. No. 532]. With the exception of KFIG, neither CCI nor any of the other DevCos has sought bankruptcy relief.

The Debtors own and/or operate or intended to develop eight exclusive private membership clubs located in South Carolina and North Carolina focused on golf, tennis, wellness and social activities at eight Cliffs communities. The clubs (individually a "Club", collectively the "Clubs") are: (i) The Cliffs at Glassy Golf & Country Club ("The Club at Glassy"); (ii) The Cliffs Valley Golf & Country Club ("The Club at Cliffs Valley"); (iii) The Cliffs at Keowee Vineyards Golf & Country Club ("The Club at Keowee Vineyards"); (iv) The Cliffs at Walnut Cove Golf & Country Club ("The Club at Walnut Cove"); (v) The Cliffs at Keowee Falls Golf & Country Club ("The Club at Keowee Falls"); (vi) The Cliffs at Keowee Springs Golf & Country Club ("The Club at Keowee Springs"); (vii) The Cliffs at Mountain

Park Golf & Country Club ("The Club at Mountain Park"); and (viii) The Cliffs at High Carolina Golf & Country Club ("The Club at High Carolina"). The Club at Walnut Cove and The Club at High Carolina are located in the State of North Carolina. The remaining six Clubs are each located in the State of South Carolina. Construction of the club amenities at six of the eight Cliffs communities is largely complete, while construction of the club amenities at two of the Cliffs communities is not. The golf course at The Club at Mountain Park has been 70% completed while construction of the club house and other amenities there has not been started. The amenities for The Club at High Carolina are still in the planning stage, and the Debtors do not own any real property at The Club at High Carolina. The Debtors' headquarters are located in Travelers Rest, South Carolina.

The ClubCos are one of five divisions of CCI, which is the parent holding company of multiple qualified sub-chapter S subsidiaries and single-member limited liability companies. Each of CCI's subsidiaries represents specific communities, development companies, golf and country clubs and support organizations. CCI is owned by James B. Anthony, who owns 79.12%; Victoria Anthony, who owns 0.80%; Cliffs Tradition, LLC, which owns .08%; and an Employee Stock Ownership Plan trust (the "ESOP"), which owns 20.00%. CCI is governed by a Board of Directors. Mr. Anthony serves as the Chairman of the Board of Directors, as well as the President of CCI. Mr. Anthony is not an officer or director of the Debtors. Mr. Anthony is not a creditor of the Debtors, and he is not an equity holder of any of the Debtors.

As of the Petition Date, CCI owned 100% of the stock of CCHG Holdings, Inc., CCHG Holdings, Inc. owned 100% of the stock of The Cliffs Club & Hospitality Group, Inc., and The Cliffs Club & Hospitality Group, Inc. was the sole member of the remaining Debtors, namely The Cliffs at Glassy Golf & Country Club, LLC, The Cliffs Valley Golf & Country Club,

LLC, The Cliffs at Keowee Springs Golf & Country Club, LLC, The Cliffs at Keowee Falls Golf & Country Club, LLC, The Cliffs at Keowee Vineyards Golf & Country Club, LLC, The Cliffs at Mountain Park Golf & Country Club, LLC, The Cliffs at Walnut Cove Golf & Country Club, LLC, The Cliffs at High Carolina Golf & Country Club, LLC, and Cliffs Club & Hospitality Service Company, LLC.

C. Sale Process.

Beginning in August, 2011, the Debtors began an intensive process to locate a "stalking horse" for the purchase of the Debtors' assets. The Debtors negotiated with, among other parties, Reed Development, Arendale Holdings, the Advisory Board of Note Holders and Carlile Development Group ("Carlile"). The Board of Directors of the Debtors, after a thorough and deliberative process, selected Carlile as its "stalking horse" and executed a term sheet.

The transaction described in the term sheet was subject to higher and better offers in the Cases pursuant to bidding procedures approved by the Bankruptcy Court, which provided for the payment of a "break up" fee to Carlile under certain circumstances.

The Debtors served the Bidding Procedures Motion, Bidding Procedures Order and the approved Bidding Procedures (each as defined in the Debtors' Status Report on Bidding Process filed April 26, 2012 [Dkt. No. 316]) on approximately eighty-two (82) individuals and companies that the Debtors believed may have a specific interest in submitting a bid pursuant to the Bidding Procedures, including individuals and companies identified by the financial advisor to the Indenture Trustee.

Prior to and following the Petition Date (and service of the Bidding Procedures Motion, Bidding Procedures Order and the Bidding Procedures), numerous interested parties contacted the Debtors expressing interest in potentially acquiring the Debtors and/or their assets. In sum,

approximately thirty-three (33) individuals and companies executed non-disclosure agreements to conduct due diligence regarding the Debtors' assets and liabilities. Following the Petition Date, approximately eleven (11) individuals and companies requested and received access to the Debtors' secure on-line data room in order to conduct due diligence in connection with their interest in participating in the bidding process.

Four parties in particular expressed serious interest in making a bid, specifically: (i) Wayne Edmondson; (ii) Reed Development (Steve Duby); (iii) NatureFirst Real Estate Holdings, LLC ("NatureFirst"); and (iv) The Seaport Group ("Seaport"). Eventually, Mr. Edmondson and Reed Development advised the Debtors that they were not interested in making a bid by the bid deadline. On April 13, 2012, the Debtors received a bid from NatureFirst. After consulting with counsel for the Indenture Trustee and the Committee, the Debtors qualified NatureFirst as a Potential Qualified Bidder (as defined in the Bidding Procedures) subject to delivery to the Debtors of the required $1 million deposit by April 16, 2012. On April 16, 2012, NatureFirst advised the Debtors that it was either not willing or not able to deliver the deposit, and withdrew from the bidding process. On April 13, 2012, the Debtors received a bid from Seaport, along with the required $1 million deposit. After consulting with counsel for the Indenture Trustee and the Committee, the Debtors qualified Seaport as a Potential Qualified Bidder. On April 20, 2012, Seaport advised the Debtors that it no longer desired to participate in the bidding process, and requested the return of its $1 million deposit, which the Debtors have returned.

On March 23, 2012, Carlile notified the Debtors that an entity named Cliffs Club Partners, LLC (defined above as "CCP") had been formed to be the operating entity of the clubs should Carlile as the stalking horse be successful at the auction. Silver Sun, LLC, whose

members are SunTx Urbana GP I, L.P. ("Urbana"), Arendale Holdings Corp. ("Arendale"), and Carlile Cliffs Investment, LLC, is the indirect parent of CCP.

Despite the best efforts of the Debtors and the Debtors' CRO to market the Debtors' assets, no Qualified Bidders (as defined in the Bidding Procedures) existed as of the scheduled date of the auction. The Debtors filed their Status Report on Bidding Process on April 26, 2012 [Dkt. No. 316].

On April 23, 2012, (i) the Debtors, the CRO, the Indenture Trustee, the Committee, and CCP conducted an all day meeting at the Atlanta office of McKenna Long & Aldridge, LLP, the Debtors' legal counsel, to negotiate the terms on which the parties would proceed with a joint Chapter 11 plan, and (ii) Debtors' counsel provided the counsel for the Plan Sponsor with an initial draft of a joint Chapter 11 plan and a disclosure statement. Thereafter, on May 9, 2012, the CRO, the Committee and representatives of the Indenture Trustee Negotiating Committee met with the Plan Sponsor in another all day meeting at the Atlanta office of McKenna Long & Aldridge, LLP, to discuss the New Club Membership Agreement and related documents, and counsel for the Plan Sponsor and counsel for the Debtors met to review the Plan Sponsor's proposed revisions to the joint Chapter 11 plan. Thereafter, negotiations on a consensual plan continued between and among the Debtors, the Plan Sponsor and the key stakeholder groups including the Indenture Trustee and the Committee, which led to the filing of a Joint Chapter 11 Plan by the Debtors and the Plan Sponsor dated May 22, 2012. Negotiations continued regarding a consensual plan, which led to the filing of the First Amended and Restated Plan on June 30, 2012. The First Amended and Restated Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor was served by BMC Group on all creditors

and equity security holders in the Cases by First Class mail and electronic mail on July 11, 2012. [Dkt. No. 521].

D. Modifications to the Plan

In order to resolve certain objections and to satisfy certain constituents, the Debtors have made certain non-material modifications, as reflected in the Plan. A Statement of Changes Made By Amendment to the Plan containing minor modifications to a number of provisions therein was filed on July 27, 2012 and served by BMC Group on the Master Service List on the same date. [Dkt. No. 616]. As the Debtors continue to work toward resolution of objections, certain additional technical corrections and modifications may be announced on the record during the Confirmation Hearing.

Section 1127(a) of the Bankruptcy Code provides a plan proponent the right to modify the plan "at any time" before confirmation so long as the Plan continues to meet the requirements of Bankruptcy Code sections 1122 and 1123, and Bankruptcy Code section 1127(d) provides that all stakeholders who previously have accepted such a plan should be deemed to have accepted the modified plan. Additionally, Local Bankruptcy Rule 3016-1 allows the Bankruptcy Court to consider for approval, at a hearing on a plan, written amendments to a plan made prior to the hearing.

Courts have allowed proponents to make non-material changes to a plan without requiring resolicitation of the plan for acceptances. See, e.g., In re A.H. Robins Co., Inc., 88 B.R. 742 (E.D. Va. 1988) (holding that technical modifications to a plan that do not adversely affect the treatment of claims or interests under the plan do not require resolicitation of acceptances or rejections of the plan and do not require that holders of claims or interests be afforded an opportunity to change previously cast acceptances or rejections of the plan); see also Enron Corp. v. New Power Co. (In re New Power Co.), 438 F.3d 1113, 1117-18 (11th Cir.

2006) ("[T]he bankruptcy court may deem a claim or interest holder's vote for or against a plan as a corresponding vote in relation to a modified plan unless the modification materially and adversely changes the way that claim or interest holder is treated."); but see In re Proveaux, unreported decision by Hon. John E. Waites (Bankr. D.S.C. 07-05384, Apr. 4, 2008) (Plan confirmation denied where Debtor's amendments to the plan were material because material amendments require an amended disclosure statement and resolicitation of ballots.) However, plan proponents need not resolicit votes to accept or reject a plan from a creditor or shareholder who rejected the plan, even if the plan materially modifies that party's treatment under the plan. In re Sweetwater, 57 B.R. 354, 358 (D. Utah 1985) (finding that creditor was not "aggrieved" because it voted to reject the plan and thus additional disclosure would not have affected the creditor's vote, and, therefore, creditor had no standing to object to plan as modified); In re Simplot, No. 06-0002-TLM, 2007 WL 2479664, at *13 (Bankr. D. Idaho, Aug. 28, 2007) (finding that a creditor who rejected a plan has no standing to object to the modified plan even if the modification is materially adverse for that stakeholder). Here, the modifications to the Plan are technical and non-material in nature or serve to clarify other provisions already in the Plan. Thus, the Debtors submit that the Plan they are presenting to the Court for confirmation complies with Bankruptcy Code section 1127.

E. Disclosure Statement and Plan Solicitation.

Following a hearing on July 2, 2012 to consider the adequacy of the Disclosure Statement, this Court entered an order on July 2, 2012 (the "Disclosure Statement Approval Order"): (i) approving the Disclosure Statement as containing "adequate information" pursuant to Bankruptcy Code section 1125; (ii) approving solicitation procedures for the solicitation of votes on the Plan; (iii) fixing August 1, 2012 as the last day for creditors and other parties in interest to have filed objections to confirmation of the Plan; (iv) scheduling a hearing to

consider confirmation of the Plan for August 6, 2012; and (v) prescribing the form and manner of notice with respect to the foregoing. As set forth in the various certificates of service that are on file with the Court, the Debtors have fully complied with each of the directives of the Disclosure Statement Approval Order. In addition, the Debtors and BMC Group supplied replacement Ballots to any voting party who either advised BMC that such party did not receive a Ballot via BMC Group's first mailing of the Solicitation Package (as defined in the Disclosure Statement Approval Order), or who otherwise requested a replacement Ballot.

F. Description of the Plan Implementation Steps.

The Plan implements a sale of substantially all of the Debtors' assets pursuant to an Asset Purchase Agreement. On the Effective Date, the Plan provides that the payment obligation owed to the Note Holders by the Debtors under the Notes is modified pursuant to the Plan. Pursuant to the terms of the Plan, the payment obligation under the Notes will be modified to provide for an aggregate payment obligation of $64,050,000, that does not bear interest. The modified payment obligation under the Notes will have a maturity of 20 years from the Effective Date of the Plan (the "Maturity Date"), although the Plan pro forma projects full repayment within 11 years.

Repayment on the modified payment obligation under the Notes will be made in annual payments, beginning on the one-year anniversary of the Effective Date of the Plan, in an amount equal to the greater of $1 million or 50% of Net Cash Flow, with a final payment of the remaining principal, if any, upon the Maturity Date. Prior to any distribution to Note Holders, the Indenture Trustee's fees and expenses will be paid as required by the Indenture. As of this date, the Debtors have been advised by counsel for the Indenture Trustee that outstanding fees and expenses of the Indenture Trustee are approximately $1.20 million. The Debtors have not reviewed any invoices regarding such fees. The Debtors note that pursuant to the Cash

Collateral Order the Debtors have been making monthly adequate protection payments of $235,000 per month to the Indenture Trustee. The Note obligations will continue to be secured by liens on the same collateral that secured the Notes – that is, the Clubs and related assets.

Once the payment obligations under the debt has been modified pursuant to the terms of the confirmed Plan, the Debtors will transfer the Clubs to CCP. Pursuant to the Plan and the Debt Assumption and Assignment Agreement, CCP will assume the payment obligations owed to the Note Holders under the modified Notes. Although the Clubs will be transferred to CCP, the liens of the Indenture Trustee against these assets will remain intact.

In connection with its acquisition of the Clubs, CCP will make arrangements with its affiliate, Cliffs Club Holdings, LLC ("CCH"), for the Exit Facility and the Mountain Park Facility. CCH will be granted first priority liens on the Clubs to secure repayment of the Exit Facility and the Mountain Park Facility. The Indenture Trustee will be required to subordinate the lien securing the obligation to the Note Holders to the liens securing these new senior loan facilities and thus the liens securing the Notes as modified will be in a junior position.

The Exit Facility will fund the various obligations that must be satisfied prior to exiting the bankruptcy case to the extent that such obligations exceed the amount of the Transfer Fees to be paid by transferring members and the $1.6 million equity infusion from CCP earmarked for such costs. The Exit Facility will accrue interest at an annual rate of 8% and will be paid from Net Cash Flow ahead of the Mountain Park Facility and modified Note obligations; however, CCP will continue to make the $1 million minimum payment on the modified Note obligations while the Exit Facility is outstanding. The Debtors currently estimate that borrowings on the Exit Facility will be approximately $3.4 million.

The Mountain Park Facility will fund golf course and amenity construction at the Mountain Park golf course. This facility carries a 0% interest rate and will be paid from Net Cash Flow ahead of the modified payment obligations under the Notes; however, CCP will continue to make the $1 million minimum payment on the modified Note obligations while the Mountain Park Facility is outstanding. The face amount of the Mountain Park Facility will be $7.5 million, but CCP estimates the amount necessary for funding the construction under the Mountain Park Facility will be approximately $5 million.

Based upon the anticipated amounts of the Exit Facility and the Mountain Park Facility, it is estimated that there will be approximately $10.90 million of senior liens against the Clubs. The Note Holders' liens and security interests will be in a junior position.

Once the senior debt facilities are put in place, CCP will contribute the Clubs and certain additional golf course real property assets to the Indenture Trustee SPE in exchange for a 100% economic interest in the Indenture Trustee SPE. An entity owned by the Note Holders (the "IT Representative") will hold a 0% economic interest in the Indenture Trustee SPE, and, through a unanimous voting provision in the Indenture Trustee SPE's operating agreement, will have control over major decisions by the Indenture Trustee SPE, such as bankruptcy filing, mergers and asset sales. In addition, CCP will fund a reserve account in the amount of $1 million to be used for maintenance and repairs at the Clubs. On an annual basis, CCP will replenish the reserve account to the $1 million level.

In connection with the transfer of the Clubs to the Indenture Trustee SPE, the Indenture Trustee SPE will take such property subject to the liens that secured the Exit Facility, the Mountain Park Facility and will assume the payment obligation under the Notes as modified by the Plan, all of which will maintain the same lien priority they had at the CCP level. The

Indenture Trustee SPE will also enter into new collateral security documents, including mortgages and/or deeds of trust, a security agreement, collateral assignment of the Master Lease and deed in lieu of foreclosure documents in order to grant and perfect the security interest and liens in the Clubs and certain additional golf course real property assets owned by the Indenture Trustee SPE. In addition, any improvements and/or new amenities built on the Clubs shall become collateral that secures repayment of the modified payment obligations to the Notes.

Concurrent with the transfer of the Clubs to the Indenture Trustee SPE as described above, the Indenture Trustee SPE and CCP will enter into a Master Lease, in which Indenture Trustee SPE will lease the Clubs to CCP. The Master Lease will provide for lease payments that reflect the modified repayment terms of the Notes (e.g., annual payments in the amount equal to the greater of $1 million or 50% of Net Cash Flow, with a final payment of the remaining principal, if any, upon the Maturity Date). Indenture Trustee SPE will pass along the "rent payments" under the Master Lease to the Indenture Trustee for distribution pursuant to the terms of an Amended Indenture.

CCP will then enter into Subleases for each golf course with seven New Club entities owned by CCP. The Subleases will contain nominal ($1.00) annual lease payments.

In the event the Indenture Trustee SPE defaults under the modified Note payment obligations under the Plan subsequent to the Effective Date, the Indenture Trustee will have a number of remedies, including without limitation, the following: (i) the right to foreclose on the assets subject to its liens; (ii) the right to require deeds in lieu of foreclosure; and (iii) the right to acquire the 100% economic member interest of the Plan Sponsor in the Indenture Trustee SPE.

The Plan establishes a Liquidating Trust to receive certain Property of the Debtors and to distribute such Property to certain Creditors in accordance with the Plan. A copy of the Liquidating Trust Agreement is included with the Plan Supplement. The Liquidation Trustee will be Katie S. Goodman. The Liquidation Trustee will have the authority to manage the day-to-day operations of the Liquidating Trust, including, without limitation, by disposing of the assets of the Liquidating Trust, appearing as a party in interest, calculating distributions, paying taxes and such other matters as more particularly described in Plan Section 7.06 and in the Liquidating Trust Agreement. Expenses of the Liquidating Trust, including the expenses of the Liquidation Trustee and her representatives and professionals, will be satisfied from the assets of the Liquidating Trust and its proceeds, as set forth in the Liquidating Trust Agreement.

On the Effective Date, all Property comprising the Estates of the Debtors not conveyed to the Plan Sponsor under the Asset Purchase Agreement will be transferred to the Liquidating Trust, free and clear of all Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests of Creditors and equity security holders, with all such Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests being extinguished subject to the rights of Holders of Rejecting Club Member Claims and General Unsecured Claims to obtain distributions provided for in the Plan. In no event will any property of any kind be returned by, or otherwise transferred from, the Liquidating Trust to any Debtor.

G. <u>Plan Summary</u>

The Plan contemplates the orderly liquidation of the Debtors through the restructuring of the Class 1 Claims followed by the sale of substantially all of the Debtors' assets to the Plan Sponsor subject to Permitted Liens and free and clear of all other liens, claims and encumbrances. Generally, the Plan classifies claims and interests into eight classes, comprising

Indenture Trustee – Note Holder Claims (Class 1); Indenture Trustee – Bridge Lender Claim (Class 2); Mechanic's Lien Claims (Class 3); Other Senior Secured Party Claims (Class 4); General Unsecured Claims (Class 5); Administrative Convenience Claims (Class 6); Club Member Claims (Class 7); and Equity Interests (Class 8). See Plan, Article II.

The Plan provides for the payment in full of all Allowed Administrative Expenses and priority claims, including priority tax claims.

The Plan is premised on the modification of the payment obligations under the Notes and security documents relating thereto evidencing the Class 1 Claims followed by the transfer to the Plan Sponsor of all of the Debtors' Real Property Collateral and of substantially all of the Debtors' remaining assets, including the Personal Property Collateral, subject to the Permitted Liens and free and clear of all other liens, Claims and encumbrances, followed by the contribution of the assets by the Plan Sponsor to the Indenture Trustee SPE, subject to the Permitted Liens, in return for a 100% member interest in the Indenture Trustee SPE (the Indenture Trustee will hold a 0% non-economic membership interest in the Indenture Trustee SPE), which will then assume the modified payment obligations under the Notes, in satisfaction of the Note Holder Claims against the Debtors and the Plan Sponsor, with the Sale Consideration including the payment on the Effective Date of Allowed Administrative Claims, DIP Facility Claims, Priority Claims, the Allowed Claim of the Bridge Lender, Allowed Mechanic's Lien Claims, Allowed Other Senior Secured Party Claims, and Allowed Administrative Convenience Claims, the first payment of three to establish a fund for distribution to Holders of Allowed General Unsecured Claims, a fund for distribution to Holders of Allowed Rejecting Club Member Claims and the Post Effective Date

Administration Plan Sponsor Funding in the manner outlined in the Plan. Equity interests will be cancelled.

Club Member Claims are dealt with in Class 7 of the Plan and the holders of such Claims are given under the Plan a choice between the following two options:

(a) Option to Join the New Clubs: A Club Member may elect in the ballot the New Club Membership Option and become one of the Accepting Club Members. If so, then upon payment of the applicable Transfer Fee, and any Membership Reinstatement Fee, if applicable, and execution of an agreement to pay at least one year of dues under the New ClubCo Membership Plan, the Class 7 Claimant will receive a membership with New ClubCo under the New ClubCo Membership Plan as well as the right to satisfaction by New ClubCo of any Membership Deposit Obligations in accordance with the Vesting Schedule. Accepting Club Members will also receive a release of claims by the Debtors.

(b) Option not to Join the New Clubs: A Club Member who does not (i) elect in the ballot the New Club Membership Option and (ii) become one of the Accepting Club Members, will thereby become one of the Rejecting Club Members and will receive its Pro Rata Share of the Rejecting Member Fund on or as soon as practicable after the later of (i) the first Distribution Date after the Claims Objection Deadline has occurred, if no objection to such Claim has been timely filed, or (ii) the first Distribution Date after the date on which any objection to such Rejecting Club Member Claim is settled, withdrawn or overruled pursuant to a Final Order of the Bankruptcy Court. On each subsequent Distribution Date or as soon thereafter as is reasonably practicable, the Liquidation Trustee will continue to make Pro Rata Distributions to Holders of Allowed Class 7 of the Rejecting Member Fund.

As set forth above, the Plan provides for the formation of a Liquidating Trust pursuant to a Liquidating Trust Agreement, the Trustee of which will be Ms. Katie S. Goodman of GGG Partners, LLC who will have all of the rights, powers and duties specified in the Liquidating Trust Agreement. Among the Liquidation Trustee's rights and duties will be to receive the General Unsecured Creditors Fund, to liquidate and collect the Retained Actions and ultimately to calculate and make all Distributions to be made to General Unsecured Creditors and to Holders of Allowed Rejecting Club Member Claims pursuant to the Liquidating Trust Agreement. In addition, the Liquidation Trustee shall have the power and responsibility to review, investigate and object to claims asserted against the Estate. The Plan provides that the Debtors or Liquidation Trustee will distribute to each Claim that is equal to or less than $1,000 a distribution equal to the Allowed Amount of such unsecured claim.

The Plan provides that the Class 8 Equity Interest will be canceled. Class 8 is deemed to have rejected the Plan. There is no claim or interest junior to the Class 8 Interest that is retaining or receiving anything under the Plan.

ARGUMENT

A. Jurisdiction and Venue

The Bankruptcy Court has jurisdiction over these Cases pursuant to 28 U.S.C. § 1334. Venue in the Bankruptcy Court is proper under 28 U.S.C. §§ 1408 and 1409. Each of the Debtors was and is qualified to be a debtor under Bankruptcy Code section 109. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2), and the Bankruptcy Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Notice, Solicitation and Acceptance

In accordance with the Disclosure Statement Order and Bankruptcy Rule 3017(d), all appropriate pleadings and Ballots were transmitted, mailed or published on the BMC website, on July 11, 2012 all as evidenced by the Certificate of Service filed by the BMC Group [Dkt. No. 521]. The Debtors timely and properly served (1) a notice of unimpaired, non-voting status on all parties in Class 2, along with notice of the Confirmation Hearing, (2) a notice of non-voting status to all parties in Class 8, along with notice of the Confirmation Hearing, and (3) a Solicitation Package, including a copy of the Plan, Disclosure Statement and related Ballots on all parties in Classes 1, 3, 4, 5, 6 and 7.

C. Adequate Notice of Confirmation Hearing

In accordance with Bankruptcy Rules 2002, 3018, 3019, 6004, 6006, 9007 and 9014 and the Disclosure Statement Order, adequate notice of the time for filing objections to Confirmation of the Plan and the transactions contemplated thereby and adequate notice of the Confirmation Hearing and the assumption of executory contracts and unexpired leases set forth in the Schedule of Assumed Contracts (as supplemented, amended, and modified) (collectively, the "Assumed Contracts") and related cure amounts were provided to all holders of Claims and Equity Interests, counterparties to the Assumed Contracts and other parties in interest entitled to receive such notice under the Bankruptcy Code and the Bankruptcy Rules. No other or further notice of the Confirmation Hearing or Confirmation of the Plan is necessary or required.

The Second Plan Supplement [Dkt. No. 615] was filed on July 27, 2012 and served that day on the Master Service List, as evidenced by the certificate of service filed with the Court [Doc. No. 622].

D. The Plan Should Be Confirmed

The plan proponent bears the burden of proving each element of 11 U.S.C. § 1129(a). See In re Dunes Hotel Assocs., 188 B.R. 174, 183 (Bankr. D.S.C. 1995).

1. The Plan Complies with Section 1129(a)(1) of the Bankruptcy Code

Bankruptcy Code section 1129(a)(1) requires that a plan comply with the "applicable provisions" of the Bankruptcy Code. Generally, in order for the Court to confirm the Plan, the Court must find that both the Plan and the debtor are in compliance with each of the requirements of section 1129(a), or if the requirements of section 1129(a)(8) are not met, then all of the requirements of section 1129(b) must be met. See In re Holywell Corp., 913 F.2d 873, 879 (11th Cir. 1990); see also In re Johns-Manville Corp., 68 B.R. 618, 629 (Bankr. S.D.N.Y. 1986), aff'd 78 B.R. 407 (S.D.N.Y. 1987), aff'd, 843 F.2d 636 (2d Cir. 1988). As demonstrated below, the Plan complies fully with the requirements of Bankruptcy Code sections 1122 and 1123 and, therefore, satisfies Bankruptcy Code section 1129(a)(1).

a. The Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code

Section 1122 of the Bankruptcy Code provides that

> (a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.
>
> (b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

The Fourth Circuit has held that section 1122 of the Bankruptcy Code "requires substantial similarity between claims that are placed in the same class. It does not, however, require that all substantially similar claims be placed within the same class, and it grants some

flexibility in classification of unsecured claims." Travelers Ins. Co. v. Bryson Props., XVIII (In re Bryson Props., XVIII), 961 F.2d 496, 502 (4th Cir. 1992), cert. denied, 506 U.S. 866 (1992). However, "[a]lthough the proponent of a plan of reorganization has considerable discretion to classify claims and interests according to the facts and circumstances of the case," a plan proponent may not unfairly create too many or too few classes, cannot design the classifications to manipulate class voting, and cannot violate basic priority rights. "Section 1122(a) is permissive rather than mandatory; however, although separate classification of similar claims may not be prohibited, it may only be undertaken for reasons independent of the debtor's motivation to secure the vote of an impaired, assenting class of claims." Hobson v. Travelstead (in re Travelstead), 227 B.R. 638, 652 (D. Md. 1998) (internal quotations omitted).

The Debtors' classification of Claims and Interests into eight (8) classes satisfies the requirements of section 1122 of the Bankruptcy Code because each Class differs from the others in a legal or factual nature based on relevant criteria. The Debtors have classified Claims and Interests based on the following distinctive categories:

1. Secured Claims of the Indenture Trustee
2. Secured Claim of the Bridge Lender
3. Mechanic's Lien Claims.
4. Other Senior Secured Party Claims
5. General Unsecured Claims (Other Than Class 6 and Class 7 Claims).
6. Administrative Convenience Claims, consisting of Claims of up to $1,000. The Administrative Convenience Class was created because separate review of the Claims constituting "Convenience Claims," which are Claims for less than $1,000, would consume the Debtors' resources with very little benefit to the Debtors' Estates.
7. Club Member Claims.

8. Equity Interests.

In each instance, the Plan appropriately classifies Claims and Interests (collectively, "Clams and Interests") based upon the different rights and attributes of the claimants or interest holders in each class and the timing required for distributions to holders of Class 1, 2, 3, 4, 5, 6, and 7 Claims and Class 8 Interests. As such, valid business, factual and legal reasons exist for classifying separately the various Classes of Claims and Interests created under the Plan. Additionally, each of the Claims or Interests in a particular Class is substantially similar to the other Claims or Interests in such Class. Thus, the Debtors submit that they have crafted a classification scheme under the Plan that satisfies the requirements of section 1122 of the Bankruptcy Code.

b. The Plan Satisfies the Seven Mandatory Plan Requirements of Sections 1123(A)(1)-(A)(7) of the Bankruptcy Code

The Plan meets the seven mandatory requirements of Bankruptcy Code sections 1123(a)(1)-(7), which require that a plan:

designate classes of claims and interests;

specify unimpaired classes of claims and interests;

specify treatment of impaired classes of claims and interests;

provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such particular claim or interest;

provide adequate means for the plan's implementation;

provide for the prohibition of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and

contain only provisions that are consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of the reorganized company's officers and directors.

Here, subsections (1) – (4) are satisfied because Articles II and III of the Plan provide for classification, treatment and voting rights of Claims and Interests, and provides for the same treatment for each Claim or Interest within a particular class. Subsection (5) is met because Article VII of the Plan includes multiple provisions providing for the implementation of the Plan including sources of consideration as well as for the execution of documents and effectuation of transactions necessary to implement the Plan. Subsections (6) and (7) are met because the Debtors are being liquidated and will have no assets or owners following the Effective Date. Accordingly, the requirements of Bankruptcy Code sections 1123(a)(6) and (7) do not apply because the Debtors are selling substantially all of their assets, none of the claimholders will receive new equity in consideration for their claims, and, because, the Plan provides for the appointment of the CRO as the Liquidating Trustee which is acceptable to the Unsecured Creditors Committee, it is consistent with the interests of the Debtors' creditors and comports with public policy. See e.g., In re McCommas LFG Processing Partners, LP, No. 07-032222, 2007 WL 4234139, at *14 (Bankr. N.D. Tex. Nov. 29, 2007) (finding section 1123(a)(7) satisfied because no officer or director was selected for the debtor and the plan provided for the selection of liquidating trustee).

c. Substantive Consolidation

As permitted in section 1123(a)(5) of the Bankruptcy Code, which provides that a plan may allow for "merger or consolidation of the debtor with one or more other persons," Plan Section 7.02 provides that the Estate of each of the Debtors will be substantively consolidated into a single consolidated Estate with respect to the treatment of all Claims and Interests. Entry of the Confirmation Order shall constitute the approval, pursuant to section 105(a) of the Bankruptcy Code, effective as of the Effective Date, of the substantive consolidation of the Cases. In furtherance of the substantive consolidation, on and after the Effective Date: (a) all

assets and liabilities of the Debtors will be merged or treated as though they were merged, (b) all guarantees of the Debtors of the obligations of any other Debtors and any joint and several liability of any of the Debtors will be eliminated; and (c) each and every claim and interest against any of the Debtors will be deemed Filed against the consolidated Debtors and all Claims Filed against more than one of the Debtors for the same liability will be deemed one Claim against any obligation of the consolidated Debtors.

A Bankruptcy Court's ability to authorize substantive consolidation derives from its general equitable powers under section 105(a) of the Bankruptcy Code, which provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." "The Court has authority to grant substantive consolidation of separate bankruptcy estates pursuant to its general equitable powers under § 105 of the Bankruptcy Code." In re Smith, 2009 WL 1241316, at *1 (Bankr. E.D.N.C. Apr. 29, 2009); In re Eagle Creek Subdivision, LLC, 407 B.R. 206, 208 (Bankr. E.D.N.C. 2008); See, Campbell v. Cathcart (In re Derivium Capital, LLC), 380 B.R. 407, 426 (Bankr. D.S.C. 2006) ("Substantive consolidation is an action allowed by the broad equitable powers of 11 U.S.C. § 105.") Although no single factor is determinative in the substantive consolidation analysis, the following factors are often used:

(1) the presence or absence of consolidated financial statements;

(2) the unity of interests and ownership between various corporate entities;

(3) the existence of parent and intercorporate guarantees on loans;

(4) the degree of difficulty in segregating and ascertaining individual assets and liabilities;

(5) the existence of transfers of assets without formal observance of corporate formalities;

(6) the commingling of assets and business functions; and

(7) the profitability of consolidation at a single physical location. See, Eastgroup Props. v. S. Motel Assoc., Ltd., 935 F.2d 245 (11th Cir. 1991).

In order to determine whether substantive consolidation is justified, courts in the Fourth Circuit have applied a two-factor test developed by the Second Circuit Court of Appeals in In re Augie/Restivo Baking Co., 860 F.2d 515, 518 (2d Cir. 1988) which found substantive consolidation to be "appropriate when (1) creditors dealt with the entities as a single economic unit and did not rely on separate identities in extending credit or (2) when the affairs of the debtor are so entangled that consolidation will benefit all creditors." In re Derivium Capital, LLC, 380 B.R. at 426; see also In re Eagle Creek Subdivision, LLC, 407 B.R. at 208.

Because of the nature of the Debtors' operations, nearly all customers, vendors and creditors typically assume they are transacting with Cliffs Golf and Country Club. The Indenture Trustee and the Note Holders dealt with the Debtors as a single economic unit and relied on all of the Debtors when entering into the Indenture. See, In re It's Greek to Me, Inc., Case No. 11-05686 (JW) (Order Authorizing Substantive Consolidation, Apr. 3, 2012), citing In re Gyro-Trac (USA), Inc., 441 B.R. 470, 487 (Bankr. D.S.C. 2010) (finding that despite the fact that "the loan issued by [creditor] was given to [debtor #2]," substantive consolidation of the three bankruptcy cases was appropriate in part because "[creditor] required personal guaranties of both [debtor #1] and [debtor #3] and obtained a lien on the assets of all of the entities").

Here, substantive consolidation is appropriate because distributions under the Plan on a consolidated basis are consistent with the equities of the case and do not harm any of the parties. The Debtors' financial statements are prepared, reviewed and audited on a consolidated basis. All of the Debtors are owned directly or indirectly by CCI. All of the Debtors are jointly and severally liable for repayment of the Indenture Trustee Claims, representing about $73 million in first priority secured claims now subordinated to repayment of the approximate $7.5 million in DIP Financing and about $2 million in Bridge Loans. Moreover, creditors dealt with the ClubCo Debtors as a consolidated entity and not as individual debtor entities. The Debtors have commingled business functions and commingled cash generated from operations. Cliffs Club & Hospitality Service Company, LLC ("ServCo") employs all of the Debtors' employees. Without substantive consolidation, the Debtors will incur significant administrative expenses identifying and assessing intercompany claims that the Debtors hold against one another. The Debtors believe that such an exercise is not justified because, as discussed below, no individual creditor will be impaired by substantive consolidation. Therefore, the Debtors respectfully submit that substantive consolidation is appropriate in the Cases and will benefit all stakeholders. This Court in In re Polymer Grp., Inc., Case No. 02-05773 (JW) (Bankr. D.S.C. Jan. 3, 2003) [Dkt. No. 1052], approved limited substantive consolidation by confirming the debtors' plan of reorganization [Dkt. No. 869 at pp. 27-28], which provided for "limited substantive consolidation of the Debtors solely for purposes of actions associated with the confirmation and consummation of the debtors' plan."

The foregoing illustrates that (1) there is substantial identity between the entities to be consolidated; and (2) consolidation is necessary to avoid some harm or to realize some benefit. Accordingly, a presumption arising in favor of consolidation and the burden shifts to an

objecting party to show that it has relied on the separate credit of one of the entities to be consolidated and that it will be prejudiced by substantive consolidation. See Reider v. FDIC (In re Ida), 31 F.3d 1102, 1108 (11th Cir. 1994). No creditor can make this necessary showing because the secured claims of the Indenture Trustee that encumber substantially all of the assets of the Debtors' Estates exceed the combined value of the Debtors Estates. Because no creditor will be harmed by substantive consolidation and because substantive consolidation will decrease the administrative expenses of these cases, substantive consolidation is appropriate.

Based upon the foregoing and upon the evidence to be offered by the Debtors at the Confirmation Hearing, the Debtors believe that it would be highly impracticable, if not impossible, for them to treat their assets and liabilities as if they were each "stand alone" entities for purposes of determining appropriate treatment of Claims under the Plan. Furthermore, the Debtors submit that the substantive consolidation of the Debtors will not prejudice the rights of their respective creditors, and that no creditor maintains an objection to the substantive consolidation of the Debtors.

Therefore substantive consolidation of the Debtors is appropriate under Bankruptcy Code sections 105(a) and 1123(a)(5)(C), and it should be approved by the Court in the Confirmation Order.

d. Discretionary Contents of the Plan are Appropriate

Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a plan of reorganization. Section 1123(b) provides that a plan may

> impair or leave unimpaired any class of claims or interests;
>
> pursuant to section 365 of the Bankruptcy Code, provide for assumption, rejection, and/or assignment of executory contracts and unexpired leases of the Debtors that have not been previously rejected;

provide for the settlement or adjustment of any claim or interest belonging to the Debtors or their Estates or the retention and enforcement of any such claim or interest;

provide for the sale of all or substantially all of the property of the estates and the distributions of the proceeds of such sale among claimants and interest holders;

modify certain rights of or leave unaffected the rights of holders of claims; and

include any other appropriate provision not inconsistent with the Bankruptcy Code.

Here, the Plan employs various provisions in accordance with the discretionary authority set forth in section 1123(b) of the Bankruptcy Code. For example, in accordance with Bankruptcy Code section 1123(b)(1), Article II of the Plan impairs certain Classes of Claims and Interests while leaving others unimpaired. Under Article II of the Plan, Class 2 is unimpaired, and Classes 1, 3, 4, 5, 6, 7 and 8 are impaired. In accordance with Bankruptcy Code section 1123(b)(2), the Plan also proposes assumption and rejection of executory contracts and unexpired leases. And, in accordance with Bankruptcy Code section 1123(b)(3), Plan Articles III and X provide for the settlement or adjustment of Claims and Interests, Plan Section 10.10 preserves Causes of Action of the Debtors, and Plan Section 10.11 assigns the Retained Actions to the Liquidation Trustee.

e. The Provisions of the Plan Regarding Impairment of Claims are Proper

Bankruptcy Code section 1123(b)(1) provides that a plan may "impair or leave unimpaired any class of claims, secured or unsecured, or of interests." As discussed above, Article II of the Plan impairs certain classes and leaves certain classes unimpaired in accordance with Bankruptcy Code section 1123(b)(1).

f. The Provisions of the Plan Rejecting Executory Contracts and Unexpired Leases are Appropriate

Bankruptcy Code section 1123(b)(2) permits a plan to "provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected." Pursuant to Article VI of the Plan, the Debtors have exercised sound business judgment in determining that all executory contracts and unexpired leases of the Debtors shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or lease that: (a) has previously been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court on or prior to the Confirmation Date, (b) is the subject of a pending motion to assume, assume and assign, or reject as of the Confirmation Date, or (c) is listed on the Schedule of Assumed Contracts, which is attached as Exhibit 1 to the Plan, as modified in any Plan Supplement. The cure amounts set forth in the Schedule of Assumed Contracts, if paid, will satisfy in full the Debtors' obligations under Bankruptcy Code section 365(b)(1)(A)-(B). The non-debtor counterparty to each Executory Contract or Unexpired Lease to be assumed is adequately assured of future performance. The Debtors respectfully submit that their decisions regarding the assumption and rejection of executory contracts and unexpired leases are authorized under Bankruptcy Code section 1123(b)(2), represent a reasonable exercise of sound business judgment, and are in the best interests of the Debtors and their Estates. Therefore, the Plan complies with Bankruptcy Code section 1123(b)(2).

g. The Release of Certain Causes of Action Set Forth in the Plan is Appropriate.

The following releases will be implemented by the Plan and the Confirmation Order:

> **<u>Releases by Debtors</u>. (i) Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, for good and valuable consideration, the adequacy of which is hereby confirmed, the**

Debtors, each in its individual capacity and as Debtors in possession, will be deemed to have forever released, and waived the Releasees and the D&O Releasees from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Debtors or the Liquidation Trustee to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder), whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan; provided, however, that (a) no Releasee or D&O Releasee will be released from any Claims, obligations, suits, judgments, debts or Causes of Action arising out of or in connection with indebtedness for money borrowed by any such person from the Debtors or for acts of gross negligence or willful misconduct; and (b) no Cause of Action against any insurer arising out of or relating to matters for which the Debtors would otherwise be liable or suffer an insurable loss will be released, including without limitation, any Cause of Action against the Debtors' directors and officers insurance carrier(s). For the avoidance of doubt, any releases of James B. Anthony, Lucas Anthony or Timothy Cherry are each conditioned upon the satisfaction by James B. Anthony of the following: (a) he becomes a D&O Releasee; and (b) he and any non-Debtor affiliates he directly or indirectly owns or controls: (i) waive and release any and all claims of any kind against the Debtors; (ii) transfer and convey to the Debtors or to the Plan Sponsor all real property, personal property and other assets used by the Debtors, or necessary to operate the businesses of the Debtors, or which is necessary to satisfy any condition precedent under the Plan or the Asset Purchase Agreement; (iii) fully cooperate with the transfer of the Acquired Assets, the Sale and the orderly transition of the Debtors' businesses to the Plan Sponsor; (iv) do not object to or oppose confirmation of the Plan; (v) vote to accept the Plan to the extent he or any of them hold a Claim entitled to vote, and (vi) otherwise cooperate fully with the consummation of the Plan, including without limitation, executing and delivering any settlement agreement and complying with any and all conditions of any settlement agreement.

Releases by Holders of Claims and Interests. Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, to the fullest extent permitted under applicable law, in consideration for the obligations of the Persons set forth below under the Plan and, if applicable, the Cash, securities, contracts, releases and other agreements or documents to be delivered in connection with the Plan, each

Holder of a Claim or Interest who votes in favor of the Plan or is presumed to have voted in favor of the Plan pursuant to section 1126(f) of the Bankruptcy Code will be deemed to have forever waived and released (i) the Debtors, (ii) the Liquidation Trustee, (iii) the Liquidating Trust, (iv) the Releasees, and (v) the D&O Releasees from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of such Holders of Allowed Claims under the Plan to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder), whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan; provided, however, that this Section 10.03(b) will not release any Releasees or the D&O Releasees from liability for acts of gross negligence or willful misconduct or any Causes of Action held by a Governmental Unit existing as of the Effective Date based on (i) any criminal laws of the United States or any domestic state, city or municipality or (ii) sections 1104-1109 and 1342(d) of ERISA. For the avoidance of doubt, any releases of James B. Anthony, Lucas Anthony or Timothy Cherry (pursuant to this Plan Section 10.03(b)) are each conditioned upon the satisfaction by James B. Anthony of the following: (a) he becomes a D&O Releasee; and (b) he and any non-Debtor affiliates he directly or indirectly owns or controls: (i) waive and release any and all claims of any kind against the Debtors; (ii) transfer and convey to the Debtors or to the Plan Sponsor all real property, personal property and other assets used by the Debtors, or necessary to operate the businesses of the Debtors, or which is necessary to satisfy any condition precedent under the Plan or the Asset Purchase Agreement; (iii) fully cooperate with the transfer of the Acquired Assets, the Sale and the orderly transition of the Debtors' businesses to the Plan Sponsor; (iv) do not object to or oppose confirmation of the Plan; (v) vote to accept the Plan to the extent he or any of them hold a Claim entitled to vote, and (vi) otherwise cooperate fully with the consummation of the Plan, including without limitation, executing and delivering any settlement agreement and complying with any and all conditions of any settlement agreement.

Parties covered by the Releases

"Releasees" means, provided the Plan is confirmed, and on the Effective Date: (a) the Debtors, (b) the CRO, (c) the DIP Lender, (d) the Bridge Lender, (e) the Indenture Trustee, Negotiating Group member (provided he or she is an Accepting Club Member), Advisory Board

member (provided he or she is an Accepting Club Member), and any Note Holder who votes a Class 1 Claim to accept the Plan, (f) the Plan Sponsor, (g) the Committee, (h) officers and directors of CMAG, CMAHG or CIPOC provided they are an Accepting Club Member, (i) the respective current and former officers, directors, employees, agents, stockholders, shareholders, managers, members, affiliates, partners, attorneys, advisors and professionals of the parties identified in subclauses (a) through (h); and (j) and any Club Member who is an Accepting Club Member. Anything to the contrary notwithstanding, the releases of James B. Anthony, Lucas Anthony and Timothy Cherry are each conditioned upon the satisfaction by James B. Anthony of the following: (a) he becomes a D&O Releasee; and (b) he and any non-Debtor affiliates he directly or indirectly owns or controls: (i) waive and release any and all claims of any kind against the Debtors; (ii) transfer and convey to the Debtors or to the Plan Sponsor all real property, personal property and other assets used by the Debtors, or necessary to operate the businesses of the Debtors, or which is necessary to satisfy any condition precedent under the Plan or the Asset Purchase Agreement; (iii) fully cooperate with the transfer of the Acquired Assets, the Sale and the orderly transition of the Debtors' businesses to the Plan Sponsor; (iv) do not object to or oppose confirmation of the Plan; (v) vote to accept the Plan to the extent he or any of them hold a Claim entitled to vote, and (vi) otherwise cooperate fully with the consummation of the Plan, including without limitation, executing and delivering any settlement agreement and complying with any and all conditions of any settlement agreement.

These provisions comply with Bankruptcy Code section 1123(b)(3). In Plan sections 10.01, 10.02 and 10.03, the Plan seeks to implement injunction, exculpation and release provisions. With respect to the release provisions of the Plan, the Debtors have authority to compromise and release derivative and other Claims that are property of the Debtors' Estates as part of the Plan pursuant to Bankruptcy Code section 1123(b)(3)(A). Here, the Plan contains releases of only such property of the Estates. Property of the estate under Bankruptcy Code § 544 includes all causes of action of a debtor. In re Si Acquisition, Inc., 817 F.2d 1142, 1149 (5th Cir. 1987). Causes of action that are property of the estate may not be asserted by individual creditors. Such estate property is protected by the automatic stay, and creditors lack standing to assert such claims. In re A.G. Fin. Serv. Ctr., Inc., 395 F.3d 410, 415 (7th Cir.

2005). Furthermore, the Debtors have thoroughly negotiated the issue of plan releases with the Indenture Trustee, the Creditors' Committee, and the Plan Sponsor.

The Debtors have authority pursuant to § 1123(b)(3)(A) to assert or compromise Claims that are property of the Estates in their Plan. A number of courts within the Fourth Circuit have held that derivative claims are property of the estate, which a debtor has the authority to pursue and compromise. See, e.g., Gulf Ins. Co. v. Ruppert Landscaping Co. (In re Nat'l Am. Ins. Co.), 187 F.3d 439, 441 (4th Cir. 1999); Detrick v. Panalpina, Inc., 108 F.3d 529, 536 (4th Cir. 1997); and Bayliss v. Rood (In re West Virginia Indus. Dev. Corp.), 424 F.2d 142, 146 (4th Cir. 1970) (citing Pepper v. Litton, 308 U.S. 295 (1939)), which includes the Debtors' ability to release Estate Claims pursuant to their Plan. See In re Ionosphere Clubs, Inc., 17 F. 3d 600, 602-04 (2d Cir. 1993) (affirming an order of the bankruptcy court enjoining the debtor's preferred stockholders from suing certain managers of the debtor for breach of fiduciary duty and tortious interference because the claims were derivative, belonged to the estate, and thus were extinguished as part of a settlement between the debtor and the managers). Moreover, the Fourth Circuit maintains a permissive view with respect to the propriety of plan releases generally, as evidenced by the Fourth Circuit's approval of consensual releases of creditors' direct claims and non-consensual releases of creditors' direct claims against non-debtors in certain circumstances. See Food Lion, Inc. v. S.L. Nusbaum Ins. Agency, Inc., 202 F.3d 223, 228 (4th Cir. 2000) (noting that § 524(e) of the Bankruptcy Code does not preclude consensual settlement of direct and personal claims and quoting In re Arrowmill, 211 B.R. 497 (Bankr. D.N.J. 1997) for the proposition that "[w]hen a release of liability of a nondebtor is a consensual provision . . . agreed to by the [a]ffected creditor, it is no different from any other settlement or contract and does not implicate 11 U.S.C. § 524(e)");

Stuart, L.L.C. v. First Mount Vernon Indus. Loan Assoc. (In re Peramco Int'l, Inc.), 3 Fed. Appx. 38, 42 (4th Cir. 2001) (ruling that § 524(e) "does not divest the bankruptcy court of jurisdiction to confirm a Chapter 11 reorganization plan that settles a creditor's rights as to property held by a nondebtor where the creditor has approved of and voted for the reorganization plan" and stated that in A. H. Robins, "we determined that section 524(e) does not deny the bankruptcy court the power to release liabilities of a non-debtor under the terms of a Chapter 11 plan when the creditors of the non-debtor approved of and accepted the terms of the plan" (quoting Menard-Sanford v. Mabey (In re A. H. Robins Co.), 880 F.2d 694 (4th Cir. 1989)).

The Plan releases are provided for good consideration including services of the Released Parties that are facilitative of the consummation of the Plan. It is not necessary that each Released Party provide specific services in order to receive the release, but collectively the Released Parties have or will provide assistance to accomplish the orderly liquidation of the Debtors under the Plan. Thus, the Plan's releases of Claims that are property of the Estates are appropriate.

Moreover, the consensual non-debtor releases by holders of claims and interests provided in section 10.01(b) of the Plan are appropriate. The authority to grant releases to non-debtors arises from § 105 of the Bankruptcy Code, which provides bankruptcy courts with the power to issue "any order, process or judgment that is necessary or appropriate to carry out the provisions of [Title 11]." See In re A.H. Robins Co., 880 F.2d 694, 702 (4th Cir. 1989) (rejecting notion that bankruptcy courts were foreclosed from releasing and enjoining causes of action against non-debtors). "[W]hether a court should lend its aid in equity to a Chapter 11 debtor will turn on the particular facts and circumstances of the case." Behrmann v. Nat'l Heritage

Foundation, 663 F.3d 704, 711 (4th Cir. 2011). "The Court of Appeals for the Fourth Circuit has determined that the bankruptcy court may release the liabilities of non-debtors in certain circumstances, including when the plan is overwhelmingly approved and where the injunction is essential to a workable reorganization." In re Railworks Corp., 345 B.R. 529, 536 (Bankr. D. Md. 2006).

"[C]ourts have found releases that are consensual and non-coercive to be in accord with the strictures of the Bankruptcy Code. Unlike the injunction created by the discharge of a debt, a consensual release does not inevitably bind individual creditors. It binds only those creditors voting in favor of the plan of reorganization." In re Specialty Equip. Co., 3 F.3d 1043, 1047 (7th Cir. 1993) (internal citations omitted). Thus, because the Debtor's Plan proposes a consensual release, "a creditor who votes to reject the Plan or abstains from voting may still pursue any claims against third-party nondebtors." *Id.* See In re Metromedia Fiber Network, Inc., 416 F.3d 136, 142 (2d Cir. 2005) ("Courts have approved nondebtor releases when . . . the affected creditors consent."); In re Monroe Wells Serv., Inc., 80 B.R. 324, 334 (Bankr. E.D. Pa. 1987) ("a plan provision permitting individual creditors the option of providing a voluntary release to nondebtor plan funders does not violate 11 U.S.C. § 524(e))").

The Fourth Circuit Court of Appeals appears to have addressed this question in A.H. Robins, because it subsequently stated that in its decision in that case "we determined that section 524(e) does not deny the bankruptcy court the power to release liabilities of a non-debtor under the terms of a Chapter 11 plan when the creditors of the non-debtor approved of and accepted the terms of the plan." Stuart, L.L.C. v. First Mount Vernon Indus. Loan Assoc., 3 Fed. Appx. 38, 42 (4th Cir. 2001) (citing in re A.H. Robins Co., 880 F.2d at 702). Cf. Food Lion, Inc. v. S.L. Nusbaum Ins. Agency, Inc., 202 F.3d 223, 228 (4th Cir. 2000) ("[W]hen a release of

liability of a nondebtor is a consensual provision . . . agreed to by the affected creditor, it is no different from any other settlement or contract . . . .").

h. Retention of Jurisdiction Post-Confirmation is Appropriate.

Under 28 U.S.C. § 1334(a) the Bankruptcy Court is vested with original and exclusive jurisdiction of all cases under the Bankruptcy Code, except to the extent provided in subsection (b) of section 1334 of Title 28. Section 1334(b) provides that "notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under Title 11, or arising in or related to cases under Title 11." Exercising its jurisdiction, the Bankruptcy Court may appropriately hear both "core" and "related to" matters arising in a case under Title 11. 28 U.S.C. § 157.

Pursuant to Article XI of the Plan, this Court will retain after the Effective Date exclusive jurisdiction of all matters arising out of, arising in or related to the Cases to the fullest extent permitted by applicable law. Article XI also identifies several specific matters over which the Court will retain jurisdiction.

The retention of jurisdiction contained in the Plan is consistent with the Bankruptcy Code. See 11 U.S.C. § 1142; In re Dilbert's Quality Supermarkets, Inc., 368 F.2d 922, 924 (2d Cir. 1966) ("The contention that adoption of the reorganization plan ousted the court of jurisdiction must be rejected. The reorganization court may retain jurisdiction of the debtor until the final decree."); In re Joint E. & S. Distribs. Asbestos Litig., 120 B.R. 648, 657 (E. & S.D.N.Y. 1990) (rejecting the "contention that the adoption of [a] plan of reorganization oust[s] the [bankruptcy] court of jurisdiction."); In re Johns-Manville Corp., 97 B.R. 174, 180 (Bankr. S.D.N.Y. 1989) ("Courts have relied on § 1142(b) to supply a basis for general post-confirmation jurisdiction"). Nothing in the Plan purports to or will extend the Bankruptcy

Court's jurisdiction beyond those matters vested in the Bankruptcy Court by Congress in Title 28 of the United States Code. Accordingly, the continuing jurisdiction of the Bankruptcy Court contemplated in Article XI of the Plan is appropriate and complies with applicable law.

2. The Debtors Have Complied Fully with the Applicable Provisions of Section 1129(a)(2) of the Bankruptcy Code

The Debtors have satisfied § 1129(a)(2) of the Bankruptcy Code, which requires that the proponent of a plan of reorganization comply with the applicable provisions of the Bankruptcy Code. The purpose of Bankruptcy Code § 1129(a)(2) is to ensure, among other things, that plan proponents have complied with the requirements of Bankruptcy Code § 1125 in the solicitation of acceptances to the plan. See In re PWS Holding Corp., 228 F.3d 224, 248 (3rd Cir. 2000) (holding that Bankruptcy Code § 1129(a)(2) requires that a plan proponent comply with the adequate disclosure requirements of Bankruptcy Code § 1125); In re Texaco, Inc., 84 B.R. 893, 903 (Bankr. S.D.N.Y. 1988); S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978); H.R. Rep. No. 595, 95th Cong., 1st Sess. 412 (1977).

a. Solicitation Under Bankruptcy Code § 1125

Section 1125 prohibits the solicitation of acceptances or rejections of a plan of reorganization "unless at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." The purpose of Bankruptcy Code section 1125 is to ensure that sufficient information is provided such that a reasonable, typical creditor may make an informed judgment about the merits of a proposed plan, and the Court "must assess the disclosure statement's adequacy and approve it before transmittal." See Nelson v. Dalkon Shield Claimants Trust (In re A.H. Robins Co., Inc.), 163 F.3d 598, 1998 WL 637401, at *3 (4th Cir. Aug. 31, 1998). Here, the Debtors have satisfied

the requirements of section 1125 of the Bankruptcy Code. On July 2, 2012, the Bankruptcy Court determined that the Debtors' Disclosure Statement and solicitation and related procedures were adequate and entered its Disclosure Statement Approval Order.

Additionally, Bankruptcy Code section 1125(e) requires that solicitation of acceptance or rejection of a plan must be done in good faith. The solicitation procedures utilized by the Debtors in the Cases were jointly developed with the Indenture Trustee and the Creditors' Committee and were the result of extensive discussions. Based on the record, the Debtors, the Plan Sponsor, and their respective directors, officers, employees, managers, members, attorneys, affiliates, agents and professionals (including but not limited to their attorneys, financial advisors, investment bankers, accountants, solicitation agents, and other professionals that have been retained by such parties) have acted in "good faith" within the meaning of Bankruptcy Code section 1125(e) and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Disclosure Statement Order and applicable non-bankruptcy law in connection with all of their respective activities relating to: (1) the solicitation of acceptances or rejections of the Plan; and (2) their participation in the other activities described in Bankruptcy Code section 1125. The Debtors solicited votes for acceptance or rejection of the Plan in good faith and in compliance with Bankruptcy Code sections 1125 and 1126, Bankruptcy Rules 3017 and 3018, the Disclosure Statement, the Disclosure Statement Order, all other applicable provisions of the Bankruptcy Code and all other applicable rules, laws and regulations. In addition, all procedures used to distribute solicitation packages to holders of Claims and Equity Interests were fair and conducted in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules and all other applicable rules, laws and regulations. Therefore, the Debtors, the Plan Sponsor, and

their respective directors, officers, employees, managers, members, attorneys, affiliates, agents and professionals should be entitled to the full protections afforded by Bankruptcy Code section 1125(e).

3. The Plan Has Been Proposed in Good Faith and Not By Any Means Forbidden by Law Pursuant to Section 1129(a)(3) of the Bankruptcy Code

Section 1129(a)(3) of the Bankruptcy Code requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law." In the context of § 1129(a)(3), good faith is not some free-floating conception of ethics or morality; rather, it has a specific meaning: good faith means that "the plan was proposed with 'honesty and good intentions' and with 'a basis for expecting that a reorganization can be effected.'" Kane v. Johns-Manville Corp., 843 F.2d 636, 649 (2d Cir. 1988), cert. denied, 488 U.S. 868 (1988) (quoting Koelbl v. Glessing (In re Koelbl), 751 F.2d 137, 139 (2d Cir. 1984)); see also Official Comm. of Unsecured Creditors v. Nucor Corp. (In re SGL Carbon Corp.), 200 F.3d 154, 165 (3d Cir. 1999) (finding that good faith requires "some relation" between the chapter 11 plan and the "reorganization-related purposes" of chapter 11); Fin. Sec. Assurance Inc. v. T-H New Orleans, L.P. (In re T-H New Orleans L.P.), 116 F.3d 790, 802 (5th Cir. 1997) (good faith inquiry involves a totality of circumstances analysis, "keeping in mind the purpose of the [Bankruptcy Code] is to give debtors a reasonable opportunity to make a fresh start"). "Generally, a plan is proposed in good faith if there is a reasonable likelihood that it will achieve a result consistent with the goals of the Bankruptcy Code," In re Piece Goods Shops Co., L.P., 188 B.R. 778, 790 (Bankr. M.D.N.C. 1995) (citing Hanson v. First Bank of S. Dakota, NA., 828 F.2d 1310 (8th Cir. 1987)) and "[t]he primary goal of chapter 11 is to promote the restructuring of the debtor's obligations so as to preserve the business and avoid liquidation." (citing NLRB v. Bildisco and Bildisco, 465 U.S. 513 (1984) ("The fundamental

purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.")). "In order to determine if a plan has been filed in good faith, a court should consider the totality of the circumstances." In re Radco Props., Inc., 402 B.R. 666, 673 (Bankr. E.D.N.C. 2009) (citing In re Piece Goods Shops Co., L.P., 188 B.R. at 790)

Here, the Plan has been proposed in good faith as evidenced by the fact that the Plan provides for the ongoing operation of the Clubs while maximizing the value of the Debtors and the recovery to creditors. The Plan was the result of extensive negotiations with the Indenture Trustee, the Creditors' Committee and other core constituencies. Therefore, the Plan has been proposed in good faith, as interpreted under the Bankruptcy Code, and will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.

4. The Plan Provides for Bankruptcy Court Approval of Certain Administrative Payments Pursuant to Section 1129(a)(4) of the Bankruptcy Code

Section 1129(a)(4) of the Bankruptcy Code requires that certain professional fees and expenses paid by the plan proponent, by the debtor or by a person issuing securities or acquiring property under the Plan be subject to approval of the Court as being reasonable. Specifically, section 1129(a)(4) requires that:

> Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

This section of the Bankruptcy Code has been construed to require that all payments of professional fees that are made from estate assets be subject to review and approval by the Bankruptcy Court as to their reasonableness. In re Printing Dimensions, Inc., 153 B.R. 715,

719 (Bankr. D. Md. 1993); In re Mason & Dixon Lines, Inc., 63 B.R. 176, 183 (Bankr. M.D.N.C. 1986).

Here, all payments made or to be made by the Debtors for services or for costs or expenses in connection with the Cases, including all Professionals' Claims, have been approved by, or are subject to approval of the Court as reasonable. In particular section 3.03(c)(ii) of the Plan provides for the payment of Professional Claims. Accordingly, the Plan complies fully with the requirements of section 1129(a)(4) of the Bankruptcy Code.

5. Post-Emergence Directors and Officers Will Have Been Disclosed Before Confirmation and Their Appointment is Consistent with Public Policy Pursuant to Section 1129(a)(5) of the Bankruptcy Code

The Debtors have complied with all elements of section 1129(a)(5) of the Bankruptcy Code. In particular, section 1129(a)(5) requires that prior to confirmation, the proponent of a plan disclose the identity and affiliations of the proposed officers and directors of the reorganized debtors and that the appointment or continuance of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy. In addition, section 1129(a)(5)(B) requires a plan proponent to disclose the identity of an "insider" (as defined by 11 U.S.C. § 101(31)) to be employed or retained by the reorganized debtor and the "nature of any compensation for such insider." See, In re Texaco, Inc., 84 B.R. at 908 (finding requirements of section 1129(a)(5)(B) satisfied where the plan discloses debtors' existing officers and directors who will continue to serve after plan confirmation).

Bankruptcy Code section 1129(a)(5)(A)(i) requires that the plan proponent disclose the identity and affiliations of any individual proposed to serve as a director or officer after plan confirmation. Because there will be no reorganized debtors, this section is met or does not apply to the Debtors.

Section 1129(a)(5)(A)(ii) of the Bankruptcy Code requires that this Court find the appointment or continuance of the proposed directors and officers is "consistent with the interests of creditors and equity security holders and with public policy." Again, because there will be no reorganized debtors, this section is met or does not apply to the Debtors. To the extent that the Court requires additional detail, the Debtors understand that no insiders of the Debtors, other than perhaps David Sawyer and Brett Kist, who are officers and directors of CCHG Holdings, Inc. and The Cliffs Club & Hospitality Group, Inc., will continue to work for the Indenture Trustee SPE following the Effective Date, and Katie Goodman, who is the Chief Restructuring Officer of the Debtors, will become the Liquidation Trustee under the Plan. Therefore, the requirements of Bankruptcy Code section 1129(a)(5) have been satisfied.

6. The Plan Does Not Require Governmental Regulatory Approval Pursuant to Section 1129(a)(6) of the Bankruptcy Code

Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that will have jurisdiction over the Debtors after confirmation has approved any rate change provided for in the plan. The Debtors do not charge any rates that are subject to the jurisdiction of any governmental regulatory commission, and, therefore, section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Cases.

7. The Plan is in the Best Interest of Creditors and Interest Holders Pursuant to Section 1129(a)(7) of the Bankruptcy Code

Section 1129(a)(7) of the Bankruptcy Code – the "best interest of creditors test" – requires that, with respect to each impaired class of claims or interests, each holder of a claim or interest of such class under the Plan on account of such claim or interest:

(1) has accepted the plan; or

> (2) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.

The best interests test applies to individual dissenting creditors rather than classes of claims and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation of that debtor's estate against the estimated recoveries under that debtor's plan of reorganization. See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 441 n.13 (1999) (explaining that "[t]he 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan"); In re Adelphia Commc'ns Corp., 368 B.R. 140, 251 (Bankr. S.D.N.Y. 2007) (explaining that section 1129(a)(7) is satisfied when impaired holder of claim would receive "no less than such holder would receive in a hypothetical chapter 7 liquidation").

The first step in meeting the best interests test is to determine the proceeds that the hypothetical liquidation of a debtor's assets and properties would generate in the context of a chapter 7 liquidation. The gross amount available would be the sum of the proceeds from liquidating the debtor's assets plus the cash held by the debtor at the time the hypothetical chapter 7 case is commenced. The amount of any claims secured by these assets, the costs and expenses of the liquidation, and any additional administrative expenses and priority claims that may result from the termination of the debtor's business and the use of chapter 7 for the purposes of a hypothetical liquidation would reduce the amount of these proceeds. Any remaining net cash would be allocated to creditors and equity interest holders in strict priority in accordance with section 726 of the Bankruptcy Code.

GGG Partners, LLC has prepared a Hypothetical Liquidation Analysis, a copy of which is attached as Exhibit D to the Disclosure Statement, that concludes that a chapter 7 liquidation would likely result in additional cost to the Debtors' Estates and a significantly lower recovery for creditors than contemplated in the Plan. Thus, the Debtors submit that they have satisfied the requirements of section 1129(a)(7) of the Bankruptcy Code.

8. The Requirement of Acceptance of Impaired Classes Pursuant to Section 1129(a)(8) of the Bankruptcy Code

Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a plan or be unimpaired under a plan. Pursuant to section 1126(c), a class of impaired claims accepts a plan if holders of at least two-thirds in dollar amount and more than one half in number of the allowed claims in that class actually vote to accept the plan. A class that is not impaired under a plan, and each holder of a claim or interest in such class, is conclusively presumed to have accepted the plan. On the other hand, a class is deemed to have rejected a plan if the plan provides that the claims or interests of that class do not receive or retain any property under the plan on account of such claims or interests.

As indicated in the Voting Summary, all Classes of Allowed Claims that voted on the Plan voted to accept it:

Class 1 – Indenture Trustee – Note Holder Claims. Four hundred forty four (444) ballots were filed in Class 1 to accept the Plan, while thirty six (36) ballots were filed in Class 1 to reject the Plan; thus, 92.50% of the votes cast in Class 1 voted to accept the Plan while 7.50% of the votes cast in Class 1 voted to reject the Plan. The dollar amount of accepting votes was $52,550,000.00, while the dollar amount of rejecting votes was $4,650,000.00; thus, 91.87% of the amount of total votes cast in Class 1 voted to accept the Plan, while 8.13% of total votes cast in Class 1 voted to reject the Plan. Therefore, more than one half in number of

claims voting in Class 1 representing more than two-thirds in amount of claims voting in Class 1 have voted to accept the Plan.

Class 3 – Mechanic's Lien Claims. Four (4) ballots were filed in Class 3 to accept the Plan, while zero (0) ballots were filed in Class 3 to reject the Plan; thus, 100% of the votes cast in Class 3 voted to accept the Plan while 0% of the votes cast in Class 3 voted to reject the Plan. The dollar amount of accepting votes was $2,253,041.30, while the dollar amount of rejecting votes was $0.00; thus, 100% of the amount of total votes cast in Class 3 voted to accept the Plan, while 0% of total votes cast in Class 3 voted to reject the Plan. Therefore, more than one-half in number of claims voting in Class 3 representing more than two-thirds in amount of claims voting in Class 3 have voted to accept the Plan.

Class 4 – Other Senior Secured Party Claims. Eleven (11) ballots were filed in Class 4 to accept the Plan, while zero (0) ballots were filed in Class 4 to reject the Plan; thus, 100% of the votes cast in Class 4 voted to accept the Plan while 0% of the votes cast in Class 4 voted to reject the Plan. The dollar amount of accepting votes was $2,536,860.23, while the dollar amount of rejecting votes was $0.00; thus, 100% of the amount of total votes cast in Class 4 voted to accept the Plan, while 0% of total votes cast in Class 4 voted to reject the Plan. Therefore, more than one-half in number of claims voting in Class 4 representing more than two-thirds in amount of claims voting in Class 4 have voted to accept the Plan.

Class 5 – General Unsecured Claims. Sixty eight (68) ballots were filed in Class 5 to accept the Plan, while one (1) ballot was filed in Class 5 to reject the Plan; thus, 98.55% of the votes cast in Class 5 voted to accept the Plan while 1.45% of the votes cast in Class 5 voted to reject the Plan. The dollar amount of accepting votes was $4,068,619.72, while the dollar amount of rejecting votes was $292,589.00; thus, 93.29% of the amount of total votes cast in

Class 5 voted to accept the Plan, while 6.71% of total votes cast in Class 5 voted to reject the Plan. Therefore, more than one-half in number of claims voting in Class 5 representing more than two-thirds in amount of claims voting in Class 5 have voted to accept the Plan.

Class 6 – Administrative Convenience Claims. Twenty four (24) ballots were filed in Class 6 to accept the Plan, while zero (0) ballots were filed in Class 6 to reject the Plan; thus, 100% of the votes cast in Class 6 voted to accept the Plan while 0% of the votes cast in Class 6 voted to reject the Plan. The dollar amount of accepting votes was $16,805.86, while the dollar amount of rejecting votes was $0.00; thus, 100% of the amount of total votes cast in Class 6 voted to accept the Plan, while 0% of total votes cast in Class 6 voted to reject the Plan. Therefore, more than one-half in number of claims voting in Class 6 representing more than two-thirds in amount of claims voting in Class 6 have voted to accept the Plan.

Class 7 – Club Member Claims. One thousand six hundred sixty one (1,661) ballots were filed in Class 7 to accept the Plan, while one hundred one (101) ballots were filed in Class 7 to reject the Plan; thus, 94.27% of the votes cast in Class 7 voted to accept the Plan while 5.73% of the votes cast in Class 7 voted to reject the Plan. The dollar amount of accepting votes was $141,286,892.49, while the dollar amount of rejecting votes was $8,241,663.35; thus, 94.49% of the amount of total votes cast in Class 7 voted to accept the Plan, while 5.51% of total votes cast in Class 7 voted to reject the Plan. Therefore, more than one-half in number of claims voting in Class 7 representing more than two-thirds in amount of claims voting in Class 7 have voted to accept the Plan.

9. The Plan Complies with Statutorily Mandated Treatment of Administrative and Priority Tax Claims Pursuant to Section 1129(a)(9) of the Bankruptcy Code

Section 1129(a)(9) of the Bankruptcy Code requires that persons holding claims entitled to priority status under section 507(a) of the Bankruptcy Code receive specified cash payments

under the plan. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, section 1129(a)(9) of the Bankruptcy Code generally requires that the plan satisfy administrative and priority tax Claims in full and in cash.

As required by section 1129(a)(9) of the Bankruptcy Code, Plan Section 3.03 provides for payment in full of Allowed Administrative Claims, and Plan Section 3.05 provides for payment in full of Allowed Priority Tax Claims. Therefore, the Debtors submit that the Plan complies with section 1129(a)(9) of the Bankruptcy Code.

10. At Least One Impaired Class of Claims Has Accepted the Plan, Excluding the Acceptances of Insiders Pursuant to Section 1129(a)(10) of the Bankruptcy Code

Section 1129(a)(10) of the Bankruptcy Code is an alternative requirement to the requirement under Bankruptcy Code section 1129(a)(8) that each class of Claims or Interests must either accept the plan or be unimpaired under the plan. Section 1129(a)(10) provides that to the extent there is an impaired Class of Claims at least one impaired Class of Claims must accept the plan, excluding acceptance by any insider. As shown above, at least one impaired Class has voted to accept the Plan (in fact, all impaired Classes of creditors voted to accept the Plan). Therefore, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

11. The Plan is Feasible Pursuant to Section 1129(a)(11) of the Bankruptcy Code

Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that the plan is feasible as a condition precedent to confirmation. Specifically, the Bankruptcy Court must determine that

> [c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

The Plan proposes the liquidation of the Debtors and so Bankruptcy Code section 1129(a)(11) has been satisfied. On its face, Bankruptcy Code section 1129(a)(11) would seem to be inapplicable because the Plan provides for the sale of substantially all of the Debtors' assets. See, e.g., In re Machne Menachem, Inc., 371 B.R. 36, 71-72 (Bankr. M.D. Pa. 2006) ("In light of the fact [that proponent's] plan leaves the Debtor with no continuing business (only funds and the ability to litigate pending actions), the Court finds the usual feasibility factors are inapplicable to the instant case."). To the extent Bankruptcy Code section 1129(a)(11) is applicable, the Debtors submit that the Plan satisfies the requirements thereof and is feasible because the implementation of the Plan and the wind-down of the Debtors' affairs pursuant thereto will be administered by the Liquidation Trustee and funded by proceeds from the Sale. Because the sale of substantially all of the Debtors' assets to the Plan Sponsor is expected to close on the Effective Date, the foregoing distributions are not dependent upon any operations by the Debtors.

The only notable remaining feasibility concern is the certainty of closing with respect to the Sale to the Plan Sponsor. In these circumstances, however, feasibility requires a probability of closing, not a guarantee. See, e.g., In re Reading Broad., Inc., 386 B.R. 562, 574 (Bankr. E.D. Pa. 2008) ("While I acknowledge that there is no guarantee that [the purchaser] will complete the purchase of the station assets from the trustee, section 1129(a)(11) of the Bankruptcy Code does not impose such a high standard. Rather, I concluded on January 17th that the evidence at the confirmation hearing was sufficient to demonstrate that the sale had a probability of closing and that the trustee's plan would be consummated.").

The information in the Disclosure Statement and the evidence that will be proffered or adduced at the Confirmation Hearing is persuasive and credible, has not been contravened by

other evidence and establishes that the Plan is feasible and the confirmation of the Plan will not be followed by liquidation as such liquidation is provided for in the Plan. Accordingly, the Plan satisfies the feasibility requirement of Bankruptcy Code section 1129(a)(11).

12. The Plan Provides for the Payment of All Fees Under 28 U.S.C. § 1930 Pursuant to Section 1129(a)(12) of the Bankruptcy Code

Section 1129(a)(12) of the Bankruptcy Code requires the payment of all fees payable under 28 U.S.C. § 1930, and Plan Section 3.03(b) provides for such payment. The Plan, therefore, complies with section 1129(a)(12) of the Bankruptcy Code.

13. The Plan Need Not Comply with Section 1129(a)(13) of the Bankruptcy Code

Section 1129(a)(13) of the Bankruptcy Code requires that all retiree benefits, as defined in Bankruptcy Code section 1114, continue to be paid post-confirmation at any levels established in accordance with section 1114 of the Bankruptcy Code. Section 1114 of the Bankruptcy Code defines "retiree benefits" as those payments made for the purpose of providing or reimbursing payments for retired employees, their spouses and their dependents for medical benefits. The Debtors do not owe any such retiree benefits; therefore, the Plan need not comply with section 1129(a)(13) of the Bankruptcy Code.

14. The Debtors Are Not Required to Make Any Payments of Domestic Support Obligations Pursuant to Section 1129(a)(14) of the Bankruptcy Code

Section 1129(a)(14) of the Bankruptcy Code requires domestic support obligations to be paid, if required by judicial or administrative order or statute, which first become payable after the date of filing the petition. The Debtors do not owe any domestic support obligations. Therefore, the Plan need not comply with section 1129(a)(14) of the Bankruptcy Code.

15. The Debtors are not an "Individual" Pursuant to Section 1129(a)(15) of the Bankruptcy Code

Section 1129(a)(15) of the Bankruptcy Code requires that an individual chapter 11 debtor, in a case in which the holder of an allowed unsecured claim objects to plan confirmation, either pay all unsecured claims in full or that the debtor's plan devote an amount equal to five years' worth of the debtor's disposable income to unsecured creditors. The Debtors are not an "individual" as contemplated in this section of the Bankruptcy Code. Therefore, the Plan need not comply with section 1129(a)(15) of the Bankruptcy Code. See In re Hawaiian Telcom Commc'ns., Inc., 2009 WL 5386130, at * 24 (Bankr. D. Hawai'i Dec. 30, 2009) (slip op.) (finding that corporation is not individual debtor, and thus, Bankruptcy Code section 1129(a)(15) is inapplicable).

16. The Plan Need Not Comply with Section 1129(a)(16) of the Bankruptcy Code

Section 1129(a)(16) of the Bankruptcy Code conditions confirmation of a plan on the fact that all transfers under the plan will be made in accordance with applicable provisions of "nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust." None of the Debtors is a nonprofit corporation or trust as contemplated in this section of the Bankruptcy Code. Therefore, the Plan need not comply with section 1129(a)(16) of the Bankruptcy Code. See In re Hawaiian Telcom Commc'ns, Inc., 2009 WL 5386130, at * 24 (finding that where Debtors were not nonprofit corporations, Bankruptcy Code section 1129(a)(15) is inapplicable).

17. The Plan Satisfies the "Cram Down" Requirements of Bankruptcy Code § 1129(b)

If any impaired Class rejects the Plan, and at least one, but not all, of the impaired Classes has voted to accept the Plan, the Debtors request "cramdown" pursuant to

section 1129(b) of the Bankruptcy Code. As noted above, all impaired Classes of creditors voted to accept the Plan. The Class 8 Equity Interest is impaired under the Plan, and is deemed to have rejected the Plan.

Section 1129(b) of the Bankruptcy Code provides that if all applicable requirements of section 1129(a) are met, save for section 1129(a)(8), a Plan may be confirmed so long as it does not discriminate unfairly and it is fair and equitable with respect to each class of claims and interests that is impaired and has not accepted the Plan. Thus, as held by courts in the Fourth Circuit, to confirm a plan that has not been accepted by all impaired classes (thereby failing the requirements of section 1129(a)(8)), the plan proponent must show that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired classes.

a. The Plan Does Not Unfairly Discriminate with Respect to Impaired Classes that Have Not Voted to Accept the Plan

Section 1129(b)(1) does not prohibit all discrimination (i.e., different treatment) among classes; rather, it prohibits only discrimination that is unfair. In re Sacred Heart Hosp. of Norristown, 182 B.R. 413, 421 (Bankr. E.D. Pa. 1995); In re Aztec Co., 107 B.R. 585, 588 (Bankr. M.D. Tenn. 1989). If separate classes do not have comparable claims, disparate treatment among them should not be considered unfair discrimination. In re Envirodyne Indus., Inc., 1993 WL 566565, at *36 (citing In re Jartran, Inc., 44 B.R. 331, 382 (Bankr. N.D. Ill. 1984)).

Some courts have posited a factor test for determining whether a plan unfairly discriminates:

whether the discrimination is supported by a reasonable basis;

whether the debtor can confirm and consummate a plan without the discrimination;

whether the discrimination is proposed in good faith; and

the treatment of the classes discriminated against.

In re Aztec Co., 107 B.R. 585, 590 (Bankr. M.D. Tenn. 1989); see also Liberty Nat'l Enters. v. Ambanc La Mesa Ltd. P'Ship (In re Ambanc La Mesa Ltd. P'ship), 115 F.3d 650, 656-57 (9th Cir. 1997).

The factor test has been further distilled to "whether the proposed discrimination has a reasonable basis and is necessary for reorganization." Bruce A. Markell, A New Perspective on Unfair Discrimination in Chapter 11, 72 Am. Bankr. L. J. 227, 243-44 (1998).

The weight of judicial authority holds that a plan unfairly discriminates in violation of Bankruptcy Code section 1129(b) only if similar claims are treated differently without a reasonable basis for the disparate treatment, or a class of claims receives consideration of a value that is greater than the amount of its allowed claims. See In re Buttonwood Partners, Ltd., 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990); In re Future Energy Corp., 83 B.R. 470, 492,93 (Bankr. S.D. Ohio 1988); Johns-Manville Corp., 68 B.R. at 636. Thus, as between two classes of claims or two classes of interests, there is no unfair discrimination if (i) the classes are comprised of dissimilar claims or interests or (ii) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment. The Debtors maintain that the Plan does not discriminate unfairly and it is fair and equitable with respect to the Class 8 Equity Interest, the sole class that is impaired and has not accepted the Plan, in light of the fact that holders of Class 8 Equity Interests receive nothing under the Plan, and the Plan complies with the "Absolute Priority Rule" as set forth below.

b. Holders of Unsecured Claims and Interests Must Be Paid in Full or Must Receive Distributions in Accordance with the "Absolute Priority Rule" (§ 1129(b)(2)(B)-(C))

The "Absolute Priority Rule" requires "that a dissenting class of unsecured creditors must be provided for in full before any junior class can receive or retain any property under a reorganization plan." Legend Radio Grp., Inc. v. Sutherland, 211 F.3d 1265, 2000 WL 359740, at *2 n.3 (4th Cir. Apr. 7, 2000) (quoting In re Bryson Props., XVIII, 961 F.2d at 503 (quoting in part Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 202 (1988)).

The holders of Unsecured Claims and Interests are all impaired under the Plan, and those Claims and Interests will receive distributions under the Plan in accordance with the "Absolute Priority Rule" because no holder of an Equity Interest will receive or retain any property or distribution under the Plan on account of such interest. The Plan is also otherwise fair and equitable to all Classes under the circumstances.

Therefore, the Debtors submit that they have satisfied the requirements of § 1129(b)(2).

c. Bankruptcy Code Section 1129(c) is Inapplicable

Bankruptcy Code section 1129(c) provides that the Bankruptcy Court may confirm only one plan. Because the Plan is the only plan before the Court, section 1129(c) of the Bankruptcy Code is inapplicable.

d. The Principal Purpose of the Plan is not Tax Avoidance or Avoidance of Securities Laws

Bankruptcy Code section 1129(d) provides that the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of application of section 5 of the Securities Act of 1933. As noted above, the Plan has been proposed with an honest intent. Moreover, no party in interest that is a governmental unit has objected to the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the

avoidance of the application of section 5 of the Securities Act of 1933. Accordingly, the Debtors submit that Bankruptcy Code section 1129(d) is satisfied.

E. Responses or Objections to Confirmation of the Plan

The Debtors received six (6) responses or objections to confirmation of the Plan (collectively, the "Objections"), as follows:

1. Keowee Investment Properties, LLC's Limited Objection to Confirmation of Plan **[Docket No. 623]**;

2. James B. Anthony's Objection to the Debtors' Plan of Reorganization **[Docket No. 626]**;

3. Keowee Falls Investment Group, LLC's Objection to Confirmation of the First Amended and Restated Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor as supplemented by the Debtors and the Plan Sponsor **[Docket No. 627]**;

4. Objection to Confirmation of the Plan filed by Catherine and Daniel Goldberg **[Docket No. 628]**;

5. Limited Response of Wells Fargo Bank, N.A., as Indenture Trustee, to Confirmation of Joint Chapter 11 Plan Filed by the Debtors and the Plan Sponsor **[Docket No. 629]**; and

6. Objection of Bruce Cassidy, Jr. to Confirmation of First Amended and Restated Joint Chapter 11 Plan Filed by the Debtors and the Plan Sponsor **[Docket No. 630]**, as amended by the Amended Objection of Bruce Cassidy, Jr. to Confirmation of First Amended and Restated Joint Chapter 11 Plan Filed by the Debtors and the Plan Sponsor **[Docket No. 632]**.

To the extent that the Objections allege that the Plan should not be confirmed, the Debtors respectfully submit that the Objections should be denied. The Debtors have commenced communications with the objecting parties to seek to resolve the Objections set forth above. The Debtors intend to submit responses to the Objections prior to the Confirmation Hearing on August 6, 2012, except to the extent that any particular Objection is resolved, in which case the Debtors will endeavor to submit an amended hearing agenda generally reflecting such resolution.

The Debtors have filed responses to the Objections, as follows:

1. Debtors' Response to James B. Anthony's Objection to the Debtors' Plan of Reorganization **[Docket No. 646]**;

2. Debtors' Response to Keowee Falls Investment Group, LLC's Objection to Confirmation of the First Amended and Restated Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor as supplemented by the Debtors and the Plan Sponsor **[Docket No. 639]**;

3. Debtors' Response to Objection to Confirmation of the Plan filed by Catherine and Daniel Goldberg **[Docket No. 648]**; and

4. Debtors' Response to Objection of Bruce Cassidy, Jr. to Confirmation of First Amended and Restated Joint Chapter 11 Plan Filed by the Debtors and the Plan Sponsor **[Docket No. 644]**.

If any of the Objections are unresolved as of the commencement of the Confirmation Hearing, then the matter will go forward on a contested basis.

CONCLUSION

For the reasons set forth herein, the Debtors and the Plan Sponsor submit that the Plan fully satisfies all applicable requirements of the Bankruptcy Code and Bankruptcy Rules and respectfully request that this Court confirm the Plan.

[*signature follows*]

Respectfully submitted this 4th day of August, 2012.

/s/ Däna Wilkinson
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