

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

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

**RESERVATION OF RIGHTS OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS TO DISCLOSURE STATEMENT
TO ACCOMPANY JOINT CHAPTER 11 PLAN FILED BY
THE DEBTORS AND THE PLAN SPONSOR**

The Official Committee of Unsecured Creditors (the “**Committee**”) of The Cliffs Club & Hospitality Group, Inc., et al., d/b/a The Cliffs Golf & Country Club, debtors and debtors-in-possession (the “**Debtors**”) in the within chapter 11 cases (the “**Chapter 11 Cases**”), hereby files this Reservation of Rights of the Official Committee of Unsecured Creditors to preserve the opportunity to object to the *Disclosure Statement to Accompany Joint Chapter 11 Plan Filed by the Debtors and the Plan Sponsor* dated May 22, 2012 [Docket No. 366] (the “**Disclosure Statement**”)² if necessary. In support hereof, the Committee respectfully states as follows:

Preliminary Statement

1. The Committee is pleased with the efforts made thus far by the Debtors and the Plan Sponsor to negotiate in good faith with the Committee toward the goal of improving the

¹ The Debtors, followed by the last four digits of their respective taxpayer identification numbers, are as follows: The Cliffs Club & Hospitality Group, Inc. (6338); CCHG Holdings, Inc. (1356); The Cliffs at Mountain Park Golf & Country Club, LLC (2842); The Cliffs at Keowee Vineyards Golf & Country Club, LLC (5319); The Cliffs at Walnut Cove Golf & Country Club, LLC (9879); The Cliffs at Keowee Falls Golf & Country Club, LLC (3230); The Cliffs at Keowee Springs Golf & Country Club, LLC (2898); The Cliffs at High Carolina Golf & Country Club, LLC (4293); The Cliffs at Glassy Golf & Country Club, LLC (6559); The Cliffs Valley Golf & Country Club, LLC (6486); Cliffs Club & Hospitality Service Company, LLC (9665).

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the *Joint Chapter 11 Plan Filed by the Debtors and the Plan Sponsor* filed on May 22, 2012 [Docket No. 365] (the “**Plan**”).

terms and conditions of the Plan and its attendant agreements including the membership and transaction documents. More directly as it pertains to the motion before the Court seeking approval of the Disclosure Statement, the Committee has presented the Debtors and the Plan Sponsor with a list of disclosures that the Committee believes warrant inclusion in the Disclosure Statement. While the Debtors and the Plan Sponsor have been receptive to most, if not all, of the comments made thus far by the Committee, at present, faced with an impending objection deadline and the absence of the filing of an amended disclosure statement, the Committee is left with no alternative but to make this filing in order to preserve its right to object if the amended disclosure statement fails to achieve its objective of providing holders of claims and interests with adequate and accurate information necessary to make an informed judgment about the Plan.

2. While a disclosure statement is always a critical document in any bankruptcy proceeding, in these cases, the draconian consequences of a failure to confirm a plan warrant special attention in alerting all involved to the benefits and risks associated with this restructuring process. As this Court is aware, after completion of the auction, the Plan Sponsor was the only bidder that put forth an offer providing a well-defined vision and future for the Cliffs Communities. In the event that the Plan is not confirmed on a timely basis and the sale to the Plan Sponsor is not consummated, the most likely consequence would be a cessation of operations and a possible liquidation. This would be catastrophic, especially with a successful reorganization so readily achievable.

3. As may be expected in circumstances where tensions run high and so much is at stake, much misinformation has been circulated by certain individual creditors about the Plan Sponsor, its proposal and supposed intentions, and the other options that these individual creditors feel might exist. This is why, more than ever, the Disclosure Statement must be a well-

crafted, comprehensive compilation of information that assists all concerned in understanding how close the estates are to successfully moving forward and how very real the risk is of falling hopelessly backwards.

Jurisdiction and Venue

4. The Court has jurisdiction over this matter pursuant to 28.U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. §§ 157(b)(2). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

5. On February 28, 2012 (the “**Petition Date**”), the Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their affairs as debtor- in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. On March 12, 2012, the United States Trustee for Region 4, under the authority conferred by section 1102(a) of the Bankruptcy Code, appointed the Committee pursuant to that certain *Fourth Amended Appointment of Committee of Unsecured Creditors* [Docket No. 141] to represent the interests of the Debtors’ unsecured creditors in these Chapter 11 Cases.

7. By order entered on March 26, 2012, the Court authorized the Committee to employ Bingham McCutchen LLP and John B Butler, III as its counsel *nunc pro tunc* to March 7, 2012.

Reservation of Rights

A. Legal Standard.

8. Section 1125(b) of the Bankruptcy Code provides that the Court may approve a disclosure statement only if it contains “adequate information.” 11 U.S.C. § 1125(b). In the absence of adequate information, the bankruptcy court cannot approve the disclosure statement,

and the plan proponent cannot solicit acceptances of the proposed plan. *See* 11 U.S.C.

§ 1125(b). *See generally* H.R. Rep. No. 95-595, at 409 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6365.

9. Section 1125(a)(1) defines “adequate information” as “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan” 11 U.S.C. § 1125(a)(1); *see, e.g., In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990); *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991) (stating that a disclosure statement must inform the relevant creditor “what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution”). *See generally* H.R. Rep. No. 95-595, at 408-409 (1977), *reprinted in* 1978 U.S.C.C.A.N. at 6364-65. “What constitutes adequate information is to be determined on a case-specific basis under a flexible standard that can promote the policy of Chapter 11 towards fair settlement through a negotiation process between informed interested parties.” *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979-80 (Bankr. N.D.N.Y. 1988). *See generally* H.R. Rep. No. 95-595, at 409 (1977), *reprinted in* 1978 U.S.C.C.A.N. at 6365.

Section 1125(a)(1) also states that when considering whether to approve a disclosure statement as containing adequate information, the court must consider “the complexity of the case, the benefit of additional information to creditors and other parties in interest and the cost of providing additional information.” The Bankruptcy Code obliges a debtor to engage in full and fair disclosure, providing to creditors “information of a kind, and in sufficient detail, as far as is reasonably practicable . . . that would enable a hypothetical reasonable investor typical of holders

of claims or interests of the relevant class to make an informed judgment about the plan”

11 U.S.C. § 1125(a)(1); *Momentum Mfg. corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994); *In re Adelpia Commc’ns Corp.*, 352 B.R. 592, 596-97 (Bankr. S.D.N.Y. 2006).

B. Specific Issues

10. The present form of Disclosure Statement should be amended to address the following infirmities in the disclosures:

- a. The Debtors and Plan Sponsor need to file a Plan Supplement containing, among other things, revised membership documents, updated projections, as well as financing and other transaction documents. With respect to the membership documents in particular, the Debtors and the Plan Sponsor should file an executive summary identifying the key terms and provisions to be contained in the new membership documents so that they are easily reviewable and understood by members at large.
- b. The Debtors and the Plan Sponsor should detail within the Risk Factors of the Disclosure Statement the impact upon the Debtors and their assets of a failure to confirm the existing Plan (and on the existing schedule). As stated above, the Debtors would most likely be forced to close down the business, liquidate their assets, and would likely leave nothing for the payment of unsecured creditors. Any cash remaining or received would almost certainly go to satisfying administrative claims, priority claims and secured claims (including the priming liens related to the DIP

and bridge financing). If the Debtors estimate of the liquidation value of their assets is even close to correct, any recovery for other classes would be eviscerated. To the extent that parties think that other bidders are awaiting the opportunity to acquire the assets, the Debtors should set forth the background leading up to the formulation of the Plan, the fact that a number of prospective buyers reviewed the assets and elected not to proceed, and the due diligence that was conducted into the merits of the buyer(s) and the positives of the Plan.

- c. The Debtors and the Plan Sponsor should provide sufficient information regarding the basis for the value of the real estate in the liquidation analysis. *See In re East Redley Corp.*, 16 B.R. 429, 430 (Bankr. E.D. Pa. 1982); *In re Forest Grove, LLC*, 448 B.R. 729, 736-37 (Bankr. D.S.C. 2011)(J. Duncan); *In re Alaska Fur Gallery, Inc.*, No. A09-00196, 2010 WL 7765565, at *3 (Bankr. D. Ak. May 25, 2010); *In re Radco Props., Inc.*, 402 B.R. 666, 675-78 (Bankr. E.D.N.C. 2009).
- d. The Debtors and the Plan Sponsor should provide sufficient information as to the ability of the Plan Sponsor to fund the Plan. *Forest Grove*, 448 B.R. at 735-36; *In re New Haven Radio, Inc.*, 18 B.R. 977, 979-80 (Bankr. D. Conn. 1982). The Disclosure Statement should also contain information on what commitments and assurances exist to insure that the Plan Sponsor performs the capital improvements proposed in the Plan.
- e. The Debtors and the Plan Sponsor should provide an analysis of the avoidable transfers (to the extent prepared and available), which, in light

of the non-transferring members, is crucial since the proceeds from avoiding those transfers will constitute the vast majority of the funds available to pay their debts. *See* Operating Guidelines and Reporting Requirements of the United States Trustee for Chapter 11 Debtors-in-Possession at 9 (attached); *see also In re Cardinal Congregate I*, 121 B.R. 760, 767 (Bankr. S.D. Ohio 1990); *In re Metrocraft Publ'g Servs., Inc.*, 39 B.R. 567, 570-71 (Bankr. N.D. Ga. 1984).

- f. The Debtors and the Plan Sponsor should provide an estimate or information regarding intercorporate claims and claims against insiders (especially as pertains to Jim Anthony and Tim Cherry), which is crucial in light of the proposed releases and exculpations in the Plan. The Disclosure Statement should be clear that these insiders will receive no releases from the estates unless they resolve their disputes with the Debtors. The Disclosure Statement should set forth what claims may exist against these individuals (both in contract and in equity) for damages sustained by virtue of, among other things, breach of contract and breach of fiduciary duty (to the extent available and not privileged). *See In re Malek*, 35 B.R. 443, 444 (Bankr. E.D. Mich. 1983); *In re The William F. Gable Co.*, 10 B.R. 248, 248 (Bankr. N.D. W. Va. 1981); *see also Cardinal Congregate I*, 121 B.R. at 767.
- g. The Disclosure Statement should expand the exculpation provisions to include the boards of and key participants on informal member

committees who have volunteered their time and effort to assist in insuring a successful restructuring for the benefit of all parties.

- h. The Disclosure Statement should contain an estimate (to the extent prepared and available) of the amount of collectible accounts receivable; estimated expenses of collecting accounts receivable; and past success or lack of success the Debtors have had in collecting accounts receivable. *See William F. Gable*, 10 B.R. at 248.
- i. The Disclosure Statement should contain sufficient information regarding the nature and extent of necessary property owned by non-Debtor parties and the leases or contracts regarding Debtors' use of the same, including the status of any litigation pertaining to such property or rights. Most interested parties do not appreciate the fact that the assets necessary to operate the Cliffs Communities as a singular enterprise are actually owned or controlled by a host of disparate non-Debtor entities. This fact, while relevant in and of itself, bears exceptional relevance should the Plan fail and the varying property interests of the Plan Sponsor are used for differing purposes other than operating as a single enterprise. Similarly, readers of the Disclosure Statement should understand that the collateral for the notes does not encompass all property necessary for the continued operations of the Cliffs Communities as presently contemplated.
- j. The Disclosure Statement should explain the consequences if a sufficient number of Members do not transfer to the new clubs.

- k. The Disclosure Statement should indicate the amount and nature of claims filed prior to the bar date, and whether the filed claims reconcile with those scheduled by the Debtors. Such information will be valuable for unsecured creditors to discern the anticipated recoveries associated with the Plan.
- l. The Disclosure Statement should explain how substantive consolidation will affect recovery of fraudulent transfers (constructive and actual) as to non-Debtors, and generally what actions are reserved by the Debtor and Plan Sponsor against non-Debtor entities.
- m. The Disclosure Statement should approve the inclusion of a communication from the Committee recommending the Plan (in the event that the Committee reaches that conclusion prior to solicitation).

C. Reservation of Rights.

11. The Committee is hopeful that the Disclosure Statement will be amended prior to the hearing to address the Committee's comments and concerns. Based upon the absence of a filed, amended document as of this date however, the Committee must reserve all rights relative to objecting to the amended Disclosure Statement, which the Committee understands will shortly be filed with this Court.

WHEREFORE, the Committee respectfully requests that this Court approves the Disclosure Statement, as amended, to incorporate the disclosures requested by the Committee.

Dated: June 28, 2012

Respectfully submitted,

/s/

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**OPERATING GUIDELINES AND REPORTING REQUIREMENTS
OF THE UNITED STATES TRUSTEE
(Revised 05/06/2010)**

FOR CHAPTER 11 DEBTORS-IN-POSSESSION

United States Trustee's Authority to Supervise the Debtor-In-Possession

The United States Trustee (the UST) is a component of the United States Department of Justice and is charged with many supervisory and administrative responsibilities in cases filed under the Bankruptcy Code. Pursuant to 28 U.S.C. § 586 and 11 U.S.C. § 704(a)(8)¹, the UST has established these **Operating Guidelines and Reporting Requirements** (the guidelines) for chapter 11 debtors-in-possession (the "debtor" or "debtors"). Under these guidelines, debtors must establish and follow certain operating procedures and file certain financial reports with the Bankruptcy Court, and provide copies to the UST², any creditors committee appointed in the case by the UST, and any other party as required by the Court. Counsel should carefully review these requirements with the debtor upon receipt.

Compliance, Amendments or Modifications

Timely compliance with each of the requirements contained herein is mandatory. Failure to comply with any requirement may result in the dismissal of the case or conversion of the case to chapter 7 pursuant to the provisions of 11 U.S.C. § 1112(b) or the appointment of a chapter 11 trustee or examiner under 11 U.S.C. § 1104.

Any request to amend or modify these requirements for a particular chapter 11 case must be made in writing and approval by the UST is effective only if in writing.

¹ 11 U.S.C. § 704(a)(8) is made applicable to a chapter 11 debtor by 11 U.S.C. §§ 1106(a)(1) and 1107(a).

² All documents filed with the Court are provided to the UST electronically. With a few exceptions, debtors are not required to serve documents on the UST.

Duties of Debtor

With the filing of a chapter 11 petition, a debtor has new duties and is often called a debtor-in-possession. The debtor has fiduciary and statutory responsibilities to preserve and maintain the estate and to operate its business as efficiently as possible in order to maximize ultimate payments on pre-petition debts while keeping post-petition obligations current. *See* 11 U.S.C. §§ 1106 and 1107. The debtor is required to comply in all respects with the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and Local Rules.

Bankruptcy law allows you to operate your business in its ordinary course. Some business actions, however, require specific Court authorization, including the following:

- Using "cash collateral" (cash, receivables, proceeds subject to liens) (*See* 11 U.S.C. § 363; Federal Rule of Bankruptcy Procedure 4001).
- Employing or compensating an attorney, accountant, or other professional. (*See* 11 U.S.C. § 327 and § 330 and Federal Rule of Bankruptcy Procedure 2014).
- Paying pre-petition unsecured debts.
- Borrowing money.
- Selling assets outside the ordinary course of business

It is the debtor's responsibility to notify the UST and Bankruptcy Court in writing of any change of address or telephone number within ten (10) days after the change.

Within 15 days after the petition is filed, the debtor must provide to the UST the debtor's Initial Debtor-In-Possession Report, a copy of which is attached to these guidelines. This report is required only once.

The debtor's schedules, statements and other documents must be filed within 15 days after the filing of a voluntary petition for relief. (Federal Rule of Bankruptcy Procedure 1007(c)). Local Rule 1007-2 provides that a case will be dismissed for failure to file these documents timely.

The list of 20 largest unsecured creditors must provide the telephone numbers of those creditors along with the information required by Federal Rules of Bankruptcy Procedure 1007(d).

Initial debtor interview

The UST will schedule an Initial Debtor Interview (“IDI”) with the debtor and counsel shortly after the case is filed. (*See* 11 U.S.C. § 1116(2) for specific requirements in small business cases.) The IDI will generally be conducted at the office of the UST, but in some cases the interview will take place at the debtor’s place of business. At the IDI, an attorney or other representative from the office of the UST will seek to become familiar with the debtor’s case as well as with the debtor’s business plan and operations, assets, liabilities, and accounting methods. Accordingly, the debtor’s representative(s) at the IDI must have personal knowledge and information regarding the debtor’s pre-petition and post-petition operations, accounting records, tax returns and financial statements. Additionally, the debtor’s representative must provide to the UST at the IDI projections of income and expenses for the first 180 days of the case. The UST’s representative will also discuss the role of the UST, explain the guidelines, and discuss scheduling matters. The IDI will be held within 30 days after the petition is filed and prior to the meeting of creditors. Failure by the debtor to attend meetings reasonably requested by the UST is cause for conversion or dismissal of the bankruptcy case. *See* 11 U.S.C. § 1112(b)(4)(H).

Meeting of Creditors

A meeting of creditors will generally be held 25 to 60 days after the petition is filed. The debtor or one of the debtor’s officers, directors, senior management personnel, or general partners must attend and respond, under oath, to questions from the UST and creditors regarding the debtor’s business and financial affairs, the cause of the bankruptcy, and the status of the debtor’s reorganization efforts. *See* 11 U.S.C. §§ 341 and 343. Failure by the debtor to attend the meeting of creditors without good cause shown is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(G) and Local Rule 2003-1.

Debtor’s Books and Records

Upon filing of the case the debtor must immediately close the debtor’s existing financial books and records and open new books and records. The debtor must keep proper records of the debtor’s earnings, expenses, receipts, disbursements, and all obligations incurred and transactions made in the operation of the business and in the management, preservation and protection of the debtor’s property.

Bank Accounts/Money of the Estate

Upon filing of the case, the debtor must immediately close pre-petition bank accounts and open new “Debtor-in-Possession” bank accounts. All receipts must flow through the debtor-in-possession account(s). All disbursements should be by check.

The account name on the bank's records must include the words "Debtor-in-Possession." Checks for the new accounts must be pre-numbered by the printer, and must be imprinted with the words "Debtor-in-Possession". Handwritten, typewritten, or hand-stamped versions are not acceptable.

All money of the estate must be deposited or invested in accordance with 11 U.S.C. § 345. Examples of deposits and investments that comply with § 345(b) include, but may not be limited to, the following:

1. Deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
2. Investments in United States Treasury securities.
3. Deposits and investments with an entity that has posted a surety bond in favor of the United States, or pledged securities of the kind specified in 31 U.S.C. § 9303, to secure the funds invested or on deposit.

If the debtor has employees, the debtor must establish three new bank accounts for the debtor-in-possession: (1) a general expense account; (2) a payroll account; and (3) a taxes/special escrow account. Checks are to be pre-numbered by the bank and should include the type of account on the face of each check (i.e., general, payroll, or tax).

The attached Bank Account Report must be provided to the UST for each account before the original date set for the meeting of creditors.

Authorized Depositories

The UST maintains a list of financial institutions which are unable or unwilling to comply with the UST's requirements and 11 U.S.C. § 345 concerning collateralization of bankruptcy estate funds. A listing of all "Non-Complying Institutions" is provided at our website at http://www.justice.gov/ust/r04/rcg_info.htm. The debtor-in-possession is prohibited from maintaining accounts or opening new accounts with these institutions.

The UST also maintains a list of financial institutions which have entered into an agreement with the UST pledging compliance with the above-referenced requirements. This listing of "Complying Institutions" is also provided at http://www.justice.gov/ust/r04/rcg_info.htm. The debtor-in-possession is encouraged to establish accounts with these institutions, if feasible.

If the debtor-in-possession prefers to use a financial institution which is not included in the complying or non-complying lists, the UST will attempt to establish an agreement with that institution. Should the institution decline, the debtor-in-possession would be required to remove

all funds and deposit them with another financial institution.

Insurance

The debtor must maintain without interruption all insurance customarily carried in the debtor's line of business or required by law or regulation. In most cases, the debtor will be required to carry liability, workers' compensation, and property insurance, i.e., fire and extended coverage. The property insurance coverage must be for no less than the fair market value or replacement cost of the insured assets. The debtor must immediately notify the UST of any lapse, cancellation, modification, or renewal of insurance coverage. Failure by the debtor to maintain appropriate insurance that poses a risk to the estate or to the public is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(C).

Before the original date set for the meeting of creditors, the debtor must submit to the UST an insurance report for each policy owned by the debtor. All reports must be submitted using the form attached. If the debtor has no insurance coverage, the debtor must submit a statement to the UST so stating. Failure to provide this form to the UST in a timely manner may result in dismissal of the case or conversion of the case to chapter 7.

Insurance coverage must be kept current throughout the Chapter 11 case. Additional reports of insurance coverage are required each time a renewal, change, or lapse of coverage occurs.

Quarterly Fees Paid to the UST

Title 11 U.S.C. § 1930(a)(6) requires that in addition to the filing fee which is paid to the Court, a quarterly fee must be paid to the UST for each quarter (including any fraction of a quarter the debtor is under Chapter 11 protection) until the case is closed, dismissed, or converted to another chapter. The quarterly fee is based on the amount of disbursements made by the debtor during the quarter with a minimum fee of \$325.00 and a maximum fee of \$30,000.00 per quarter. The complete current quarterly fee schedule is attached to the guidelines.

Quarterly fee bills are mailed to the debtor by the UST at the end of each quarter with instructions on how to determine the fee and make proper payment of the fee. The fee is due on the last day of the calendar month following the calendar quarter for which the fee is incurred. Any debtor not receiving a statement for the fee or having questions about the fee should contact the UST's office. Failure to timely pay quarterly fees may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(K).

Notice to Debtors Making Payment by Check

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to 2 times.

FEE SCHEDULE

<u>Total Quarterly Disbursements</u>	<u>Quarterly Fee</u>
\$0 to \$14,999.99	\$325
\$15,000 to \$74,999.99	\$650
\$75,000 to \$149,999.99	\$975
\$150,000 to \$224,999.99	\$1,625
\$225,000 to \$299,999.99	\$1,950
\$300,000 to \$999,999.99	\$4,875
\$1,000,000 to \$1,999,999.99	\$6,500
\$2,000,000 to \$2,999,999.99	\$9,750
\$3,000,000 to \$4,999,999.99	\$10,400
\$5,000,000 to \$14,999,999.99	\$13,000
\$15,000,000 to \$29,999,999.99	\$20,000
\$30,000,000 or more	\$30,000

NOTICE

**DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER
FOR THE PURPOSE OF COLLECTING AND REPORTING DELINQUENT
QUARTERLY FEES OWED TO THE UNITED STATES TRUSTEE
PURSUANT TO 28 U.S.C. § 1930(a)(6)**

Pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, § 31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. § 3701, the UST intends to use the debtor's Taxpayer Identifying Number ("TIN") as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceedings for the purpose of collecting and reporting on any delinquent debt, including chapter 11 quarterly fees, that are owed to the UST.

The UST will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices to the debtor; (4) engage private collection agencies to collect the debt; and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

Taxes

The debtor must remain current on the payment of all post-petition federal, state, and local taxes and file all tax returns on a timely basis. If the debtor has payroll tax obligations, the debtor may be required to open a special tax account and report payroll tax deposits to the appropriate taxing authority. Failure by the debtor to timely pay post-petition taxes or to file post-petition tax returns is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(I).

Monthly Operating Reports

All debtors must file with the Court not later than the 20th day of each month a written financial report for the entire preceding calendar month. This report must be filed in electronic format and must conform to the format prescribed by these guidelines. Qualifying small business debtors must use the Official Form B25 C monthly report, a copy of which is provided at the U.S. Bankruptcy Court's website at <http://www.uscourts.gov/bkforms/index.html>. Individual debtors and non-small business debtors who generally report their financial activity on a cash basis should also use the Official Form B25 C. Non-small business debtors who generally report on an accrual basis should use the "Monthly Operating Report for Debtors Reporting on an Accrual Basis", a copy of which is provided at the UST website at http://www.justice.gov/ust/r04/rcg_info.htm. Debtors should provide their reports to their attorneys early enough to allow for filing in electronic format by the 20th day of the month. Failure to file these reports with the Court in a timely manner may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(F, H).

If the debtor files a bankruptcy petition more than ten days prior to the end of any calendar month, a monthly report must be filed for that portion of the calendar month no later than the 20th day of the following month. A debtor who files ten days or less prior to the end of a calendar month must include these days in the report for the following month. A debtor should not file a monthly report which covers a period exceeding 41 days.

A chapter 11 debtor must also file periodic final reports using Official Form B26 to report the value, operations, and profitability of each entity in which the debtor has a substantial or controlling interest unless the entity is publically traded or also a debtor in bankruptcy. This

requirement applies mostly to debtor corporations which control or own at least 20 percent of another entity. A copy of this form is available at the U. S. Bankruptcy Court's website at <http://www.uscourts.gov/bkforms/index.html>.

Unsecured Creditors Committee

The Bankruptcy Code requires the UST to appoint a creditors committee composed of unsecured creditors willing to serve. *See* 11 U.S.C. § 1102. The committee is appointed from the list of the 20 largest unsecured creditors submitted with the petition.

Shortly after the filing of the petition, the UST invites between ten and twenty of the debtor's largest unsecured creditors to serve on the unsecured creditors committee. Potential committee members receive information explaining the duties and responsibilities of the creditors committee. If at least three creditors respond affirmatively, the UST appoints an unsecured creditors committee. The report of selection of the creditors' committee is filed with the Court with copies sent to the debtor, counsel for the debtor, and the members chosen to serve on the committee. If less than three unsecured creditors are willing to serve on a committee, no committee is appointed. In that instance, a report of non-appointment is filed with the Court. Section 1103(d) requires the debtor to meet with the creditors' committee as soon as practicable after the appointment of the committee to transact such business as may be necessary and proper.

Section 1102 authorizes the UST to appoint a committee of other creditors of a common type or class if such appointment is necessary to assure their adequate representation. For example, under certain circumstances, the UST may appoint a committee of timeshare holders, limited partners, or bondholders.

If a committee is appointed in a qualifying small business case, the debtor is no longer considered a small business debtor unless the Court determines that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor.

Disclosure Statement and Plan of Reorganization/Liquidation

The disclosure and plan process is the heart of the reorganization under chapter 11. The debtor is required to file a disclosure statement and plan of reorganization/liquidation within 180 days after the case is filed. Failure to do so may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(E, H).

_____ A disclosure statement should contain adequate information to allow creditors to make an informed decision as to whether the confirmation of the plan is in their best interests. The disclosure statement should be meaningful and easily understood. While circumstances will vary widely from one chapter 11 case to the next, and, therefore, the parameters of "adequate information" may also vary, the following information is considered to be critical to an evaluation of the adequacy of a disclosure statement.

1. The necessary financial information, data and projections relevant to the creditors' decision to accept or reject the Chapter 11 plan.
2. The assets and liabilities of the business. Provide current balance sheet information and the source of appraisal values.
3. The events leading to the filing of the petition and the financial difficulties of the debtor.
4. The operating condition and success of the debtor while in Chapter 11.
5. An estimate of the return to creditors under a Chapter 7 liquidation (brief liquidation analysis).
6. A list of all claims against the debtor, if practicable, showing the claims to which objections are anticipated and the reasons for the objections. A list of claims to be recognized under the plan.
7. A statement regarding the debtor's compliance with all responsibilities to file tax returns and pay taxes due both pre and post-petition.
8. An analysis of the potential tax consequences to the debtor and other parties-in-interest resulting from the plan.
9. The parties responsible for the future management of the debtor (controlling persons), and the rate or amount of compensation to be paid for their services.
10. A detailed estimate of the administrative expenses contemplated under the plan, including, but not limited to, attorneys' fees, accountants' fees and other professional fees and expenses. This includes quarterly fees to the UST.
11. The estimated collectability of the debtor's accounts receivable.
12. The risks posed to creditors under the plan.
13. An analysis of potential preferential or otherwise voidable transfers and the debtor's plan, if any, to pursue such recoveries.
14. Anticipated future litigation (bankruptcy and non-bankruptcy contexts) and the estimated cost and source of revenue to fund this litigation.

15. A statement that the plan represents a legally binding arrangement and should be read in its entirety, as opposed to relying on the summary in the disclosure statement.
16. The impaired classes under the plan. Include a layman's definition of impairment.
17. A statement that approval of the disclosure statement by the Bankruptcy Court does not constitute approval of the plan.
18. Whether any creditors' committee exists and, if so, whether it participated in negotiating the terms of the plan.
19. An explanation of the voting requirements for acceptance of the plan.

Qualifying small business debtors may use the form plan and disclosure statements known as Office Forms 25A and 25B which are available at the U. S. Bankruptcy Court's website at <http://www.uscourts.gov/bkforms/index.html>.

Failure by the debtor to file a disclosure statement and plan of reorganization/liquidation within 180 days after the entry of the order for relief may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(E).

Upon denial of a disclosure statement, the attorney for the proponent should advise the Court and UST of a date by which a new or amended disclosure statement could be filed, and a deadline will be set forth in the order denying approval of the disclosure statement.

Additional Requirements and Considerations for Small Business Debtors

A "small business case" is a case in which the debtor is a "small business debtor." *See* 11 U.S.C. § 101 (51C) and (51D). 11 U.S.C. § 1116 sets out a number of specific requirements in small business cases:

1. The debtor must append to the voluntary petition its most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or a statement made under penalty of perjury that the financial statements have not been prepared or the tax return has not been filed.
2. The debtor must attend, through its senior management personnel and counsel, meetings scheduled by the UST, including an initial debtor interview and the meeting of creditors, unless the Court waives the requirement upon a finding of extraordinary and compelling circumstances.

3. The debtor must timely file all schedules and statements unless the Court grants an extension of time, which shall not extend beyond 30 days after the order for relief absent extraordinary and compelling circumstances.
4. The debtor must file all post-petition financial and other reports required by the Federal Rules of Bankruptcy Procedure or Local Bankruptcy Rules.
5. The debtor must maintain insurance customary and appropriate to the industry, subject to 11 U.S.C. §363(c)(2) concerning use of cash collateral.
6. The debtor must timely file tax returns and other required governmental filings and timely pay all taxes entitled to administrative expense priority, except those being appropriately and diligently contested, and subject to 11 U.S.C. § 363(c)(2) concerning use of cash collateral.
7. The debtor must allow the United States Trustee or a designated representative to inspect the debtor's business premises, books, and records at reasonable times, and after reasonable prior written notice, unless the debtor waives notice.

In a small business case, the Court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary. *See* 11 U.S.C. §1125(f)(1), Presumably, such a determination will be made by the Court upon the request of the debtor.

Provisions Specific to Debtors Who are Individuals

Title 11 includes a number of provisions that apply specifically to chapter 11 cases in which the debtor is an individual³, including the following:

1. Property of the bankruptcy estate includes property acquired post-petition. *See* 11 U.S.C. § 1115(a)(1).
2. Property of the bankruptcy estate includes post-petition earnings from personal services. *See* 11 U.S.C. § 1115(a)(2).
3. The plan must provide for the debtor to pay creditors all or such portion of earnings from personal services or other future income of the debtor as is necessary for the execution of the plan. *See* 11 U.S.C. § 1123(a)(8).
4. If a holder of an allowed unsecured claim objects to confirmation of the plan, the plan must either provide for payment of the full value of the claim as of the

³ Individual debtors may also be small business debtors.

effective date, or for payment of the projected disposable income of the debtor for five years or for the term of the plan, whichever is longer. Disposable income is defined in 11 U.S.C. §§ 1325(b)(2), 1129(a)(15).

5. At the request of the debtor, the trustee, the UST, or the holder of an allowed unsecured claim, the plan may be modified at any time after confirmation but before completion of payments to a) increase or reduce the amount of payments to a particular class; b) extend or reduce the time period for payments; or c) change the amount to be paid to a creditor to the extent necessary to take account of any payments made other than under the plan. *See* 11 U.S.C. § 1127(e).
6. At the request of the Court, the UST, or any party in interest, the debtor must file with the Court a copy of any post-petition federal income tax returns at the same time they are filed with the taxing authorities, and certain pre-petition federal income tax returns that had not been filed with the taxing authorities on the petition date. *See* 11 U.S.C. § 521(f).
7. An individual debtor does not receive a discharge until completion of all payments under the plan. The Court may grant a discharge to an individual debtor who has not completed all plan payments if the Court finds that the value of the property actually distributed to unsecured creditors as of the effective date is not less than the amount that would have been paid in a chapter 7 case if the estate had been liquidated on the effective date, and if the Court also finds that modification of the plan under 11 U.S.C. § 1127 is not practicable. *See* 11 U.S.C. § 1141(d)(5).
8. An individual debtor owing a “domestic support obligation” as defined at 11 U.S.C. § 101(14A) (alimony, child support, etc.), must provide written notice of the bankruptcy filing to the holder of the obligation and to the appropriate state child support enforcement agency. The initial notices of a debtor’s bankruptcy filing must be sent by the meeting of creditors, and proof of service must be furnished to the UST within ten days. Notification of receiving a bankruptcy discharge should be sent to these same parties after a discharge is obtained. The forms attached to these guidelines should be used to send notices to the appropriate parties.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:)
)
) Chapter 11
) Case No.
)
)
)
Debtor.)

BANK ACCOUNT REPORT

A report must be filed for each account or deposit maintained by the debtor or trustee.

NAME OF ACCOUNT:

ACCOUNT NO:

NAME, ADDRESS, AND TELEPHONE OF DEPOSITORY:

SIGNATORIES:

TYPE OF ACCOUNT: (general, payroll, tax, other--if other, please specify)

The deposit is fully insured or guaranteed by the United States or a department, agency, or instrumentality of the United States, or backed by the full faith and credit of the United States. The debtor or trustee will notify the United States Trustee immediately if the aggregate deposits at any one financial institution exceed \$100,000.

The debtor hereby authorizes the depository to release to the United States Trustee any information that may be requested pursuant to the United States Trustee's duties under 28 U.S.C. § 586(a)(3), including bank statements and copies of any documents pertaining to the above Debtor-in-Possession accounts.

(Signature of debtor or debtor's principal)
Name:
Address:
Telephone Number:

Date: _____

UNITED STATES BANKRUPTCY Court
DISTRICT OF SOUTH CAROLINA

IN RE:)
)
) Chapter 11
) Case No.
)
)
)
)

Debtor.)

INSURANCE COVERAGE REPORT

A report must be filed for each insurance policy maintained by the debtor or trustee.

PROPERTY INSURED:

TYPE OF COVERAGE:

POLICY NUMBER:

AMOUNT (LIMITS) OF COVERAGE:

POLICY TERM (specific month, day, and year):

NAME, ADDRESS AND TELEPHONE OF LOCAL AGENT:

A copy of the policy declaration page is attached as Exhibit "A." The debtor or trustee agrees to maintain this coverage at all times. Proof of any change, renewal or lapse of coverage shall be immediately reported to the United States Trustee using this form.

(Signature of debtor or trustee)

Name:

Address:

Telephone Number:

Date: _____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In Re:) Chapter 11
)
) Case Number _____
)
)
 _____ Debtor(s))

INITIAL DEBTOR-IN-POSSESSION REPORT

The debtor-in-possession (DIP or debtor) captioned above acknowledges receipt of the Chapter 11 Debtor Instructions and Requirements and submits the following report.

A. Books and Records

The books and records of the debtor have been closed out as of the date of filing of the petition herein. A new set of books and records has been opened for the debtor-in-possession.

B. Bank Accounts

All pre-petition bank accounts have been closed and new accounts have been opened for the debtor-in-possession Yes ___ No ___

C. Insurance Coverage

The debtor has in force or has ordered the following types of insurance which comprise all of the types of insurance normally required for a business of this nature:

Auto and truck ___ Liability ___ Fire ___ Workers Comp. ___

D. Employee Information

Current number of employees _____
Gross monthly payroll: _____
Officers, directors and principals _____
Other employees _____

All post-petition payroll obligations including payroll taxes are current. Exceptions:

Date: _____ Signed: _____ Title: _____

ALL QUESTIONS ON THE DEBTOR-IN-POSSESSION REPORT MUST BE ANSWERED

**INITIAL LETTER TO STATE CHILD SUPPORT ENFORCEMENT AGENCY
REGARDING A CLAIM FOR A DOMESTIC SUPPORT OBLIGATION
Chapter 11**

[Name of State Agency]
[Address of State Agency]
Attn: [Contact person at State Agency]

Re: Support Obligation Owed to [Name of Person Owed Support]
By [Name of Debtor, Bankruptcy Case No. 05-xxxxx]

Dear [Contact person at State Agency]:

I filed a Chapter 11 case on [Date of Filing] in the United States Bankruptcy Court for the _____ District of _____. The following person has a claim for support against me:

Name of Holder of Claim:
Address of Holder of Claim:
Telephone Number of Holder of Claim:

In addition, please be advised that I have sent [Holder of Claim] a letter which explains that your agency will assist in collecting child support from me.

Finally, if I successfully complete this bankruptcy case and receive a discharge from other debts, I will send you another letter with additional information that may help your agency assist [Name of Holder of Claim] get paid any support still owed.

Sincerely,

Individual Chapter 11 Debtor in Possession

Draft 9/7/05

**INITIAL LETTER TO HOLDER OF CLAIM
FOR A DOMESTIC SUPPORT OBLIGATION
Chapter 11**

[Name of Person Owed Support]
[Address of Person Owed Support]

In re: Name of Debtor
Case No: 05-xxxxx

Dear [Name of Person Owed Support]:

On [Date of Filing] I filed a chapter 11 case in the United States Bankruptcy Court for the _____ District of _____. I listed you as being owed money for a domestic support obligation. If this domestic support obligation includes child support, you have the right to ask your state child support enforcement agency to assist you in collecting this child support during and after the bankruptcy case. The name, address and telephone number of this agency in your state are listed below:

[Name of Child Support Enforcement Agency]
[Address of CSEA]
[Telephone No. of CSEA]

If this letter has reached you, but you have moved to another state, you may wish to visit the internet web site of the Office of the U.S. Trustee at www.usdoj.gov/ust for a complete listing of the child support enforcement agencies for all states.

If I successfully complete this bankruptcy case and receive a discharge from other debts, I will send you another letter with additional information that may help you get paid any domestic support obligations you are owed.

Sincerely yours,

Chapter 11 Individual Debtor

Draft 9/7/05

**DISCHARGE NOTIFICATION TO
STATE CHILD SUPPORT ENFORCEMENT AGENCY REGARDING
A CLAIM FOR A DOMESTIC SUPPORT OBLIGATION
Chapter 11**

[Name of State Agency]
[Address of State Agency]
Attn: [Contact person at State Agency]

Re: Domestic Support Obligation Owed to [Name and Address of Person Owed
Support]
By [Name of Debtor, Bankruptcy Case No. 05-xxxxx]

Dear [Contact Person at State Agency]:

Please be advised that I was granted a discharge in bankruptcy on [Date of Discharge].
The following information is being provided to assist in your efforts to collect any domestic
support obligation which I may still owe to [Name of Person Owed Support]:

My Current Address:

My Current Employer:

Address of My Current Employer:

I am obligated to provide you the names and addresses of certain creditors whose debts
were reaffirmed or not discharged. These creditors are as follows:

These creditors may be a source of information regarding any future address I may have.
If you request information from these creditors, they are allowed by law to disclose to you my
last known address.

Sincerely,

Chapter 11 Debtor in Possession

Draft 9/7/05

**DISCHARGE NOTIFICATION TO HOLDER OF CLAIM FOR A DOMESTIC
SUPPORT OBLIGATION
Chapter 11**

[Name of Holder of Claim]
[Address of Holder of Claim]

Re: [Name of Debtor]
[Case No. 05-xxxxx]

Dear [Name of Holder of Claim]:

Please be advised that I was granted a discharge in bankruptcy on [Date of Discharge].
The following information is being provided to assist in your efforts to collect any support which
I may still owe you:

My Current Address:

My Current Employer:

Address of My Current Employer:

I am obligated to provide you the names and addresses of certain creditors whose debts
were reaffirmed or not discharged. These creditors are as follows:

These creditors may be a source of information regarding any future address I may have.
If you request information from these creditors, they are allowed by law to disclose to you my
last known address.

Sincerely,

Debtor in Possession (Ch 11)

Draft 9/7/05