

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

Debtors.

Jointly Administered

OBJECTION TO DISCLOSURE STATEMENT TO ACCOMPANY JOINT
CHAPTER 11 PLAN FILED BY DEBTORS AND THE PLAN SPONSOR

Worthington Hyde Partners-II, L.P. ("WHP"), by and through counsel, and pursuant to 11 U.S.C. § 1125 and Rules 3016 and 3017 of the Federal Rules of Bankruptcy Procedure, files this Objection (the "Objection") to the Disclosure Statement to Accompany Joint Chapter 11 Plan filed by the Debtors ("Debtors") and the Plan Sponsor ("Disclosure Statement"). As grounds for the Objection, WHP states as follows:

I. Factual Background

1. Each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on February 28, 2012 (the "Petition Date").
2. Upon its selection, the Plan Sponsor² and the Debtors filed their Plan and Disclosure Statement in support of the Joint Chapter 11 Plan on May 22, 2012.

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).

² All defined terms shall have the meanings as set forth in the Disclosure Statement and Plan.

3. WHP is a property owner in the Cliffs Communities as more particularly described herein. WHP is the owner of 31 platted lots in The Cliffs at Glassy, 31 platted lots at The Cliffs of Keowee Vineyards, and 28 platted lots and approximately 500 acres of raw land in The Cliffs at Keowee Falls North.
4. WHP is also the holder of a first mortgage on 140 platted lots and approximately 1598 acres of raw land and various items of personal property at The Cliffs at Keowee Falls South.
5. In addition, WHP is a party to that certain Agreement Regarding Memberships and the Supplemental Agreement Regarding Memberships executed between WHP, the Debtors and certain others (the "Agreement").
6. WHP objects to approval of the Disclosure Statement on various grounds as discussed below.

II. Standard for Approval of Disclosure Statement

7. Pursuant to 11 U.S.C. § 1125, a disclosure statement must provide:

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. For a disclosure statement to meet the adequate information standard, it must include, *inter alia*, the circumstances that gave rise to the commencement of the chapter 11 case, the condition and performance of the debtor while in chapter 11, a liquidation analysis setting forth the estimated return to creditors in a hypothetical chapter 7 case, information relevant to the risks to creditors, the existence and value of avoidance actions, and the tax consequences of the plan. *In re Oxford Homes, Inc.*, 204 B.R. 264

(Bankr. D. Me. 1997); *In re Cardinal Congregate I*, 121 B.R. 760, 767 (Bankr. S.D. Ohio 1990). Precisely what constitutes adequate information will vary based upon the particular circumstances of each case. *Kirk v. Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988).

8. A number of courts have indicated that the below information should be included in a disclosure statement, which first appeared in *In re Metrocraft Pub. Services, Inc.*, in the Bankruptcy Court for the Northern District of Georgia:

(1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability (sic) of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (N.D. Ga. 1984). See also *In re Keisler*, No. 08-34321, 2009 WL 1851413 at *4 (Bankr. E.D. Tenn. June 29, 2009); *In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170-171 (Bankr. S.D. Ohio 1998); *In re U.S. Brass Corp.*, 194 B.R. 420, 424 (Bankr. E.D. Tex. 1996); *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991); *In re A.C. Williams Co.*, 25 B.R. 173 (Bankr. N.D. Ohio 1982).

9. Ultimately, a disclosure statement, as a whole, must provide the information that is reasonably necessary to permit an informed judgment by creditors and parties-in-interest whether to vote in favor of or against a proposed plan of reorganization. *In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994); *Abel v. Shugrue (In re Ionosphere Clubs, Inc.)*, 179 B.R. 24, 29 (S.D.N.Y. 1995). As the Eastern District has summarized, "[g]enerally, a disclosure statement must contain all pertinent information bearing on the success or failure of the proposals in the plan of reorganization,' and 'must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.'" *In re Keisler*, 2009 WL 1851413 at * 4 (quoting *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991); *In re Cardinal Congregate I*, 121 B.R. at 765).

III. Argument

10. The Disclosure Statement fails to adequately describe and disclose the entities that serve as the Plan Sponsor. In the Plan, the defined term states that it means "New ClubCo," the party determined to be the highest and best bidder by the Debtors and the CRO in accordance with the Bidding Procedures. The Disclosure Statement should clearly define and disclose the entities composing the Plan Sponsor, including the disclosure of present

ownership and the respective status of the members of the Plan Sponsor as property owners in The Cliffs Communities.

11. With regard to the feasibility of the Plan, the Disclosure Statement provides that "the Debtors believe" that the Plan Sponsor can and will close the transaction and pay the Sale Consideration. The Disclosure Statement fails to provide any basis for the Debtors' belief and should require that the Plan Sponsor disclose its financial ability to close the transaction and pay the Sale Consideration.
12. The Plan filed adopts that certain Master Membership Plan under which it is stated that certain membership classifications are only guaranteed to be made available to persons purchasing Property from a "Developer" within The Cliffs Communities. . . The Disclosure Statement should be required to further define who is, or who can be, a "Developer" as provided for in the Master Membership Plan accompanying the Plan.
13. The Master Membership Plan further provides that certain memberships will be reserved for sale to future purchasers of the Developers' inventory of property located within The Cliffs Communities. The Disclosure Statement again fails to define and identify any (a) developer or (b) developers for The Cliffs Communities.
14. The Disclosure Statement fails to address the Agreement to which WHP is a party with the Debtors and particularly whether or not WHP would be entitled to enforce the Agreement so as to allow WHP to purchase memberships in the various clubs in which it is a property owner.
15. At a minimum, the Court should require the Disclosure Statement to be amended to provide the information requested above which WHP asserts is reasonably necessary to

permit an informed judgment by it and other parties in interest to determine whether to vote in favor of or against the Plan.

IV. Conclusion

For the reasons set for the above, WHP respectfully requests that the Court deny approval of the Disclosure Statement and that WHP have such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection was served the 28th day of June, 2012, electronically via ECF upon all the parties of record through the Court's electronic filing system and also, by sending same via electronic mail to the following on this the 28th day of June, 2012, at Columbia, South Carolina:

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By: /s/ J. Derrick Jackson (#5836)