

**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

**DEBTORS' MOTION PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY
CODE FOR AN ORDER EXTENDING THEIR EXCLUSIVE PERIOD TO SOLICIT
ACCEPTANCES OF CHAPTER 11 PLAN**

COME NOW The Cliffs Club & Hospitality Group, Inc. and its affiliated debtors in the above-captioned Chapter 11 cases, as debtors and debtors-in-possession (collectively, the "Debtors"), by and through undersigned counsel, and hereby file this motion for an order extending their exclusive period to solicit acceptances of their Chapter 11 plan (the "Motion"), respectfully stating as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these Chapter 11 cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

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).

BACKGROUND

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

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

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

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

6. On May 22, 2012, the Debtors filed the Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor (the “Plan”)² [Docket Entry No. 365] and the Disclosure Statement to Accompany the Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor (the “Disclosure Statement”) [Docket Entry No. 366].

7. On May 24, 2012, this Court entered the Order Setting Hearing on Disclosure Statement [Docket Entry No. 368], setting a hearing on July 2, 2012 to consider approval of the Disclosure Statement.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

REQUESTED RELIEF

8. The exclusive period within which the Debtors may solicit acceptances of the Plan (the “Exclusive Solicitation Period”) currently expires on August 26, 2012. Pursuant to Section 1121(d) of the Bankruptcy Code, the Debtors request the entry of an order, substantially in the form attached hereto as Exhibit A, extending the Debtors’ Exclusive Solicitation Period to, through and including October 1, 2012, without prejudice to the Debtors’ right to seek and obtain further extensions of the Exclusive Solicitation Period should they become necessary.

BASIS FOR RELIEF REQUESTED

9. Section 1121(b) of the Bankruptcy Code provides for an initial period of one hundred twenty (120) days after the commencement of a Chapter 11 case during which a debtor has the exclusive right to file a Chapter 11 plan. Section 1121(c) of the Bankruptcy Code provides that, if a debtor files a plan within the 120-day exclusive period, a debtor has an initial period of one hundred eighty (180) days after the commencement of a Chapter 11 case to solicit acceptances of such plan, during which time competing plans may not be filed. These periods are intended to afford a debtor a full and fair opportunity to propose a consensual Chapter 11 plan and solicit acceptances thereof without the deterioration and disruption of the debtor’s business that is likely to be caused by the filing of competing plans by non-debtor parties.

10. Where these periods prove to be an unrealistic timeframe, section 1121(d)(1) of the Bankruptcy Code allows a bankruptcy court to extend the periods upon a showing of cause:

[O]n request of a party in interest made within the respective period specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d). However, the 120-day period “may not be extended beyond a date that is 18 months after the [commencement] date” and the 180-day period “may not be extended beyond a date that is 20 months after the [commencement] date.” 11 U.S.C. § 1121(d)(2).

11. Although the Bankruptcy Code does not define the term “cause” for purposes for exclusivity, the legislative history indicates it is intended to be a flexible standard to balance the competing interests of a debtor and its creditors. *See* H.R. Rep. No. 95-595, at 231, 232 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6191 (noting that Congress intended to give bankruptcy courts flexibility to protect a debtor’s interest by allowing unimpeded opportunity to negotiate settlement of debts without interference from other parties in interest).

12. In this case, because the Debtors filed the Plan within the initial 120-day exclusive period provided by section 1121(c) of the Bankruptcy Code, the Debtors have an initial period of one hundred eighty (180) days after the Petition Date to solicit acceptances of the Plan, during which time competing plans may not be filed. By this motion, the Debtors seek only the extension of the Exclusive Solicitation Period – from August 26, 2012 to, through and including October 1, 2012.

13. Bankruptcy courts have held that the decision to extend the exclusive periods provided in section 1121(c) of the Bankruptcy Code is left to the sound discretion of the bankruptcy court, and should be based on the totality of the circumstances. *See, e.g., In re Friedman’s, Inc.*, 336 B.R. 884, 888 (Bankr. S.D. Ga. 2005); *In re Service Merchandise Co., Inc.*, 256 B.R. 744, 751 (Bankr. M.D. Tenn. 2000); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); *First Am. Bank of N.Y. v. Sw. Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986). Courts have considered the following non-exhaustive factors to

determine whether “cause” exists to extend the exclusive periods provided in section 1121(c) of the Bankruptcy Code:

- (1) the size and complexity of the case;
- (2) the necessity of sufficient time to negotiate and prepare adequate information;
- (3) the existence of good faith progress toward reorganization;
- (4) whether the debtor is paying its debts as they come due;
- (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- (6) whether the debtor has made progress negotiating with creditors;
- (7) the length of time the case has been pending;
- (8) whether the debtor is seeking an extension to put pressure on its creditors; and
- (9) whether unresolved contingencies exist.

Friedman’s, 336 B.R. at 888. The Debtors analyze below each of these factors in turn, which analysis demonstrates that “cause” clearly exists to extend the Exclusive Solicitation Period in these bankruptcy cases.

14. First, cause exists to extend the Exclusive Solicitation Period because the size and complexity of these bankruptcy cases may cause the Debtors to be unable to complete the solicitation of acceptances of the Plan prior to the expiration of the Exclusive Solicitation Period on August 26, 2012. As set forth in the Debtors’ schedules and statements of financial affairs, as well as in the record in these cases, the Debtors have assets and liabilities well in excess of \$100 million, the Debtors have obtained \$7.5 million in debtor-in-possession financing to operate their substantial business operations, and there are numerous creditors and parties in interest in these cases, evidenced by the nearly 1,300 proofs of claim filed, whose interests the Debtors must consider with respect to their Chapter 11 Plan. Due to potential unforeseen events or complications in these large and complex cases, the Debtors may be unable to complete the

solicitation of acceptances of the Plan prior to the expiration of the current Exclusive Solicitation Period.

15. Second, cause exists to extend the Exclusive Solicitation Period because the Debtors may require additional time to negotiate with creditors and parties in interest with respect to the solicitation of acceptances of the Plan. Because the Debtors may be unable to negotiate adequately with creditors and parties in interest prior to the expiration of the Exclusive Solicitation Period on August 26, 2012, cause exists to extend the Exclusive Solicitation Period to October 1, 2012.

16. Third, cause exists to extend the Exclusive Solicitation Period because the Debtors are making good faith progress toward confirmation of their Chapter 11 Plan. The Debtors, along with their legal and financial advisors, have engaged in, and continue to engage in, discussions and negotiations with the Debtors' secured and unsecured creditors, the Plan Sponsor, the Committee and other parties in interest regarding the Debtors' Chapter 11 Plan. The Debtors respectfully submit that they may require additional time than is afforded by the present Exclusive Solicitation Period to continue such discussions and negotiations in order to complete their solicitation of acceptances of the Plan.

17. Fourth, cause exists to extend the Exclusive Solicitation Period because the Debtors are paying their debts as they come due. The Debtors have obtained approval of a debtor-in-possession financing facility to better ensure their ability to pay their administrative expenses as they come due.

18. Fifth, cause exists to extend the Exclusive Solicitation Period because the Debtors have demonstrated reasonable prospects for filing a viable plan. In fact, the Debtors have

already filed their Chapter 11 Plan, and respectfully submit that the Plan, as may be amended, is viable.

19. Sixth, cause exists to extend the Exclusive Solicitation Period because the Debtors have made significant progress negotiating with both their secured and unsecured creditors, as evidenced by the submission of the Debtors' Chapter 11 Plan jointly filed with the Plan Sponsor.

20. Seventh, cause exists to extend the Exclusive Solicitation Period because the Debtors' bankruptcy cases have been pending for only three months, and in that time, among other things, the Debtors have: (i) continued to operate as debtors in possession of their assets while complying with the reporting obligations of their secured creditors, the United States Trustee and the Court; (ii) obtained Court approval of numerous "first day" motions; and (iii) filed the Plan and Disclosure Statement. The Debtors' primary focus moving forward is to confirm the Plan with requisite acceptances thereof by creditors in these cases. The Debtors respectfully submit that they may require additional time than is afforded by the present Exclusive Solicitation Period to complete their solicitation of acceptances of the Plan.

21. Eighth, cause exists to extend the Exclusive Solicitation Period because the Debtors are not requesting an extension of the Exclusive Solicitation Period to put pressure on any of their creditors.

22. Ninth, the Debtors presently are unaware whether any unresolved contingencies exist.

23. In sum, the totality of the circumstances clearly warrant the requested extension of the Exclusive Solicitation Period. Moreover, the requested extension complies with 11 U.S.C. § 1121(d)(2) because the proposed extension of the Debtors' Exclusive Solicitation Period to October 1, 2012 is well within 20 months after the Petition Date.

NOTICE

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

NO PREVIOUS REQUEST

25. No previous request for the relief sought in this Motion has been made by the Debtors to this Court or any other court.

WHEREFORE, the Debtors respectfully request entry of an order: (i) extending the Debtors' Exclusive Solicitation Period to October 1, 2012; and (ii) granting the Debtors such other and further relief as is just and proper.

[signature follows]

Dated: June 7, 2012

Respectfully submitted,

/s/ Däna Wilkinson

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EXHIBIT A

PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

Case No. 12-01220

**ORDER GRANTING DEBTORS' MOTION PURSUANT TO SECTION 1121(d) OF THE
BANKRUPTCY CODE FOR AN ORDER EXTENDING THEIR EXCLUSIVE PERIOD
TO SOLICIT ACCEPTANCES OF CHAPTER 11 PLAN**

The relief set forth on the following pages, for a total of 4 pages including this page, is hereby **ORDERED**.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:

**The Cliffs Club & Hospitality Group, Inc., et al.,¹
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Debtors.

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Case No. 12-01220

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**ORDER GRANTING DEBTORS' MOTION PURSUANT TO SECTION 1121(d) OF THE
BANKRUPTCY CODE FOR AN ORDER EXTENDING THEIR EXCLUSIVE PERIOD
TO SOLICIT ACCEPTANCES OF CHAPTER 11 PLAN**

This matter came on for hearing on July 2, 2012 at 10:00 a.m. (Eastern) (the "Hearing") on the motion [Docket Entry No. _____] (the "Motion")² filed by The Cliffs Club & Hospitality Group, Inc. and its affiliated debtors in the above-captioned Chapter 11 cases, as debtors and debtors-in-possession (collectively, the "Debtors") requesting entry of an order extending the Debtors' exclusive period to solicit acceptances of the Debtors' Chapter 11 Plan (the "Exclusive Solicitation Period") all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and due notice of the Motion having been given in accordance with the Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket

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² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

Entry No. 121]; and it appearing that no other or further notice need be provided; and the Court having determined that cause exists to extend the Exclusive Solicitation Period pursuant to 11 U.S.C. § 1121 and that the relief sought in the Motion is in the best interests of the Debtors, the Debtors' bankruptcy estates, and the Debtors' creditors and other parties in interest; and having considered the record; and after due deliberation; and good cause existing to grant the relief requested in the Motion,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to 11 U.S.C. § 1121(d), the Debtors' Exclusive Solicitation Period is extended to, through and including October 1, 2012.
3. This Order shall be without prejudice to the Debtors' right to seek additional extensions of the Exclusive Solicitation Period.
4. This Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and implementation of this Order.

AND IT IS SO ORDERED

Prepared and presented by:

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