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**
	Jointly Administered
Debtors.	

DEBTORS' RESPONSE TO AMENDED OBJECTION BY BRUCE CASSIDY, JR. TO CONFIRMATION OF THE FIRST AMENDED AND RESTATED JOINT CHAPTER 11 PLAN FILED BY THE DEBTORS AND THE PLAN SPONSOR

COME NOW The Cliffs Club & Hospitality Group, Inc. and its affiliated debtors in the above-captioned Chapter 11 cases, as debtors and debtors-in-possession (collectively, the "Debtors"), by and through undersigned counsel, and hereby respond (this "Response") to Amended Objection of Bruce Cassidy, Jr. ("Cassidy") to Confirmation of the First Amended and Restated Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor (the "Cassidy Objection"), pursuant to which Cassidy requests that this Court deny confirmation of the First Amended and Restated Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor dated

[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 (4293) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC (6559) (12-01234); The Cliffs Valley Golf & Country Club, LLC (6486) (12-01236); and Cliffs Club & Hospitality Service Company, LLC (9665) (12-01237).

June 30, 2012, as amended [Docket Entry Nos. 479 and 616, Ex. A] (the "Plan").[2] In support of this Response, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

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

BACKGROUND

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

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

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

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

6. On July 2, 2012, the Debtors filed the Plan and the First Amended and Restated Disclosure Statement to Accompany the First Amended and Restated Joint Chapter 11 Plan

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

filed by the Debtors and the Plan Sponsor [Docket Entry No. 480] (the "Disclosure Statement").

7. On July 27, 2012, the Debtors filed the Statement of Changes Made by Amendment to the First Amended and Restated Joint Chapter 11 Plan Filed by the Debtors and the Plan Sponsor dated June 30, 2012 [Docket Entry No. 616].

RELIEF REQUESTED

8. For the reasons set forth below, the Cassidy Objection is unfounded and should be denied.

9. Cassidy lacks standing to prosecute the Cassidy Objection. Although Cassidy has filed a proof of claim, as evidenced by the Addendum to Proof of Claim attached thereto, Cassidy states that his claim is made as a claim in the amount of $2,600,000.00 from that certain Founder's Program Agreement executed April 14, 2008 by and between The Cliffs at High Carolina, LLC and Bruce Cassidy, Jr., a copy of which agreement is attached to the proof of claim (the "Founder's Program Agreement"). The Debtors have filed an objection to allowance of the Cassidy Claim. [Dkt. No. 588].

10. A careful review of the signature page of the Founder's Program Agreement reflects that Bruce Cassidy Jr. executed that agreement in his representative capacity as a partner. Because the signature page has been redacted, it is not clear which entity holds the Cassidy Claim and it may be that Tappan Real Estate Investments, LLC may be the counterparty and that Cassidy signed the Founder's Program Agreement in his representative capacity as a partner of that entity.

11. Cassidy has provided no proof of payment of the $2 million he claims was paid pursuant to the agreement. If the check was drawn on Tappan Real Estate Investments, LLC,

Cassidy will need to demonstrate why Cassidy as an individual has the right to assert a claim, rather than Tappan Real Estate Investments, LLC, under the Founder's Program Agreement.

12. Additionally, even if Cassidy is the holder of the Cassidy Claim against The Cliffs at High Carolina, LLC, that entity is not one of the Debtors. Instead it is a non-debtor affiliate.

13. Furthermore, the Cassidy Claim is filed as a secured claim, yet the only evidence of perfection is "see membership handout." No membership handout is attached to the Cassidy Claim.

14. Finally, The Cliffs at High Carolina Golf & Country Club, LLC, which is one of the Debtors, is not a signatory to the Founder's Program Agreement, and that Debtor does not own any real property or personal property to which a secured claim might attach had it been a party to the Founder's Program Agreement. The Cliffs at High Carolina Golf & Country Club, LLC has two assets: namely, an out of the money option to purchase certain land from Longview Land Company (that is the subject of a mortgage significantly greater than the value of the land that is the subject of the option) and the rights as a mechanics' lien holder against the property of Longview Land Company for work done on such property to clear the land for a future golf course. Because the mechanics lien is junior in priority to the significant mortgage on that property, the lien has little, if any, value.

15. Cassidy relies upon the fact that Schedule G to the Schedules filed by The Cliffs at High Carolina Golf & Country Club, LLC lists an agreement/honorary membership contract with him as an executory contract. The Cliffs at High Carolina Golf & Country Club, LLC, having more closely reviewed its records, has filed an amendment that removes Cassidy from the list of executory contract holders in its Schedules.

16. The effective purpose of the Founder's Program Agreement was for the participant to infuse $2 million of capital during the nascent stages of the development of a new gated golf community by The Cliffs at High Carolina, LLC, in exchange for the right to use a $2.5 million credit toward a lot purchase in the development at some future point in time and the right to obtain a Lifetime Honorary Membership in the Cliffs at High Carolina Golf & Country Club. If the participant declined to purchase a lot, he could become entitled to a return of his "investment." The Cliffs at High Carolina Golf & Country Club, LLC has not issued Cassidy an honorary membership. At best, Cassidy or Tappan Real Estate Investments LLC has a breach of contract claim against a non-debtor affiliate for its failure to provide Cassidy with: (i) a lot at High Carolina on which to build a residence and (ii) a membership in a golf club for a course that has not yet been built. Because Cassidy does not have an executory contract with one of the Debtors, he also has no rejection damages claim against the Debtors. The Plan provides for the rejection of all club membership agreements with the Debtors. Although the Plan is designed to enable members of predecessor clubs to join the New Clubs, under certain circumstances, Cassidy's interest in obtaining a membership, promised to him from a non-debtor, from the New Clubs without the payment of any money to the Debtors or to the New Clubs is not enforceable against the Debtors.

17. Section 1128 of the Bankruptcy Code provides that "[a] party in interest may object to confirmation of a plan." 11 U.S.C. § 1128(b). The term "party in interest" is defined in Section 1109 of the Bankruptcy Code to include debtors, the trustee, creditors' and equity committees, individual creditors and equity security holders, and indenture trustees. 11 U.S.C. § 1109(b). While the list of persons or entities that may constitute "parties in interest" under Section 1109(b) is not exhaustive, the concept of party in interest is not "infinitely elastic." In

re Morris Publ'g Grp., LLC, 2010 WL 599393, *2 (Bankr. S.D. Ga. Feb. 10, 2010). The U.S. Court of Appeals for the Fourth Circuit has held that the term "party in interest" is meant to include "'all persons whose pecuniary interests are directly affected by the bankruptcy proceedings.'" In re Hutchinson, 5 F.3d 750, 756 (4th Cir. 1993) (emphasis added) (quoting In re Leavell, 141 B.R. 393, 399 (Bankr. S.D. Ill. 1992)). "Where a party is merely interested in the outcome of a matter and does not have a direct legal interest . . . that party is not a 'party in interest.'" In re Barnwell Cnty. Hosp., 459 B.R. 903, 907 (D. S.C. 2011).

18. With respect to standing to object to confirmation of a Chapter 11 plan specifically, bankruptcy courts generally hold that parties who do not fall into any of the statutorily enumerated "party in interest" categories under Section 1109(b) and who have only indirect relationships to the debtor do not have standing to object to confirmation of the debtor's plan. For example, a subsidiary of a debtor who is not a creditor of the debtor lacks standing to object to confirmation. In re MCorp Fin., Inc., 160 B.R. 941, 959 (S.D. Tex. 1993). Likewise, a party that is not a creditor of the debtor itself but is merely a creditor of a non-debtor person or entity related to the debtor lacks standing to object to confirmation of the debtor's plan. In re Cypresswood Land Partners, I, 409 B.R. 396, 416 (Bankr. S.D. Tex. 2009) (where debtor was joint venture between two managing partners, entity that had no claim against debtor joint venture but did have claim against one managing partner lacked standing to object to debtor's plan). Parties that are merely concerned with the outcome of a Chapter 11 proceeding lack standing to object to confirmation. See Morris Publ'g Grp., 2010 WL 599393, at *2 (subscribers to newspaper published by debtors, whose prepetition claims were to be paid in full under plan, lacked standing to object to confirmation of debtors' plan based on concerns regarding newspaper's future journalistic quality and a management). "[A]n entity without

some kind of direct relationship with the debtor, the debtor's property, or the administration of the bankruptcy estate . . . is generally not a party in interest under § 1109(b)." Id. at *4.

19. Even where a party falls into one of the specifically enumerated "party in interest" categories in Section 1109(b), that party still lacks standing to object to aspects of the proposed plan that do not directly affect their own interests as party in interest. In re Orlando Investors, L.P., 103 B.R. 593, 596 (Bankr. E.D. Pa. 1989) (even parties in interest "'have standing only to challenge those parts of a reorganization plan that affect their direct interests.'") (quoting In re Evans Prods. Co., 65 B.R. 870, 874 S.D. Fla. 1986)). A party in interest may have standing to object to one provision of plan that directly affects its pecuniary interest as party in interest but lack standing to object to other plan provisions that do not. In re Ofty Corp., 44 B.R. 479, 481 (Bankr. D. Del. 1984). "'Only parties adversely affected by provisions of a plan may raise an objection to confirmation based on such provisions.'" In re Gaston & Snow, 1996 WL 694421, *7 (S.D.N.Y. Dec. 4, 1996) (quoting In re Johns-Manville Corp., 68 B.R. 618, 623-24 (Bankr. S.D.N.Y. 1987)); accord TM Patents, L.P. v.IBM Corp., 121 F. Supp. 2d 349, 362 (S.D.N.Y. 2000) (A party in interest who is not directly aggrieved by a provision in a plan of reorganization lacks standing to object to that specific provision).

20. Applying the foregoing standards to the facts of this case, Cassidy lacks party in interest standing to maintain the Cassidy Objection. Mr. Cassidy is not a creditor of any of the Debtors, rather, he is a creditor of a non-debtor affiliate of the Debtors. Because Mr. Cassidy is not a creditor of the Debtors, he is not a statutory party in interest under Section 1109(b). Mr. Cassidy also lacks the type of direct relationship with any of the Debtors that would otherwise confer party in interest status upon him. See Cypresswood Land Partners, 409 B.R. at 416

(party that is not a creditor of the debtor itself but is merely a creditor of a non-debtor person or entity related to the debtor lacks standing to object to confirmation).

21. "In a bankruptcy case, in addition to constitutional standing concerns, the standing of a party requesting to be heard is dependent on whether the party is a 'party in interest.'" Barnwell Cnty. Hosp., 459 B.R. at 907 (citing In re Global Indus. Techs., Inc., 645 F.3d 201, 210 (3d Cir. 2011)). "Standing is a threshold issue in every federal litigation." In re Teligent, Inc., 417 B.R. 197, 209 (Bankr. S.D.N.Y. 2009). "Every party in federal court must demonstrate proper standing to bring a case." In re 1031 Tax Group, LLC, 439 B.R. 47, 59 (Bankr. S.D.N.Y. 2010) (citing Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11 (2004)). Because Mr. Cassidy lacks standing to object to confirmation of the Plan, the Cassidy Objection must be disregarded without consideration of the Cassidy Objection on its merits.

22. Without waiving their lack of standing objection, Debtors respond to the balance of the Cassidy Objection as follows:

23. Cassidy is not a Claim Holder against the Debtor, but against a non-Debtor affiliate. (Cassidy Objection ¶18). The Debtors agree. See standing argument above.

24. Cassidy alleges that the Plan effectuates a release of Cassidy's claim against The Cliffs at High Carolina, LLC. (Cassidy Objection ¶18) The Debtors disagree. Even if Cassidy were a creditor of the Debtors, which he is not, Cassidy has not voted in favor of the Plan, so Plan Section 10.03(b), which provides for consensual releases, is inapplicable to Cassidy.

25. Cassidy complains that the Debtors have failed to describe the Cliffs Development Company Affiliate Claims that they request the Court to recharacterize as equity. (Cassidy Objection ¶19). The Debtors' First Omnibus Objection to the Claims filed by the Cliffs Development Company Affiliate was filed on July 12, 2012 and may be found at Dkt.

No. 528. Paragraph 7 of that Omnibus Objection, clearly reflects that The Cliffs at High Carolina, LLC is not one of the Cliffs Development Company Affiliates whose claim is the subject of a motion to recharacterize from debt to equity. The Debtors do not believe that The Cliffs at High Carolina, LLC has a claim against any of the Debtors. None has been scheduled and none has been filed. Cassidy's claim against that non-debtor affiliate is therefore not affected by any equity recharacterization relief requested by the Debtors.

26. Cassidy complains that the Plan violates Bankruptcy Code section 1129(b) because it unfairly discriminates between general unsecured creditors. (Cassidy Obj. ¶20-34). The Debtors respectfully submit that because all Classes of Creditor Claims have voted to accept the Plan by the requisite majorities in number and amount, Section 1129(b) is not implicated. The Debtors otherwise rely upon their Memorandum in Support of Plan Confirmation.

27. Cassidy contends that the Plan violates Bankruptcy Code section 1129(a)(7) because it cannot comply with the best interests of creditors test. (Cassidy Objection ¶35-36). Cassidy's claim arises out of an agreement with a non-debtor affiliate and, if it were admissible against the Debtors, which it is not, it would be limited to The Cliffs at High Carolina Golf & Country Club, LLC. Because the Cliffs at High Carolina Golf & Country Club, LLC has no real property and its two assets (an underwater option to purchase and an out of the money mechanics' lien claim) are of little or no value and in any event are subject to the secured claims of the DIP Lender ($7.5 million), the Bridge Lender ($2 million) and the Indenture Trustee ($64,050,000), the Debtors respectfully submit that the Court has more than ample evidence to find that holders of claims against The Cliffs at High Carolina Golf & Country

Club, LLC, will receive no less beneficial treatment than they would have received if that Debtor were to be liquidated under Chapter 7 of the Bankruptcy Code.

28. Cassidy contends that the Plan violates section 1123(b) as it relates to settlement of Claims and Interests of the Debtors (Cassidy Obj. ¶37-42). Again, since Cassidy is not a creditor of the Debtors and did not vote to accept the Plan, under Plan Section 10.03(b) Cassidy's claims against third parties are not affected by the Plan. Accordingly, Cassidy lacks standing to complain about releases that do not affect Cassidy including the arguments Cassidy raises regarding non-consensual releases of claims by third parties against non-debtors.

29. Cassidy contends that the Plan violates Bankruptcy Code section 1129(a)(11) because it is not feasible and is likely to be followed by a liquidation or further reorganization. (Cassidy Obj. ¶ 43-46). 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.

30. 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.

31. 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.").

32. Cassidy's objection here appears to be focused on a possible transfer of property at High Carolina by the Debtors to the Plan Sponsor. As stated previously, the Debtors do not own any real property at High Carolina. The Debtors do not propose to transfer any real property at High Carolina to the Plan Sponsor. Accordingly, Cassidy's argument is misplaced and the Plan satisfies the feasibility requirement of Bankruptcy Code section 1129(a)(11).

33. Cassidy alleges that the Plan does not comply with 11 U.S.C. § 1129(a)(3), which requires that the Plan be "proposed in good faith and not by any means forbidden by law." (Cassidy Objection, ¶ 47-48). 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, that the Plan has been proposed in good faith is evidenced by the fact that the Plan provides for the ongoing operation of the Clubs under new ownership 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.

34. Cassidy's objection appears premised on a failure to disclose non-debtor assets included in the Plan. Also, Cassidy complains that the relevant schedules to the asset purchase agreement have not been filed. The Debtors have filed a draft of the Disclosure Schedules to the Asset Purchase Agreement [Dkt. No. 641]. Once again, the Debtors state that the transaction contemplated by the Plan does not require any real property at High Carolina be transferred to the Plan Sponsor under the Plan. See, Declaration of Katie S. Goodman [Dkt. No. 642, ¶17] and Declaration of John Kunkel [Dkt. No. 643, ¶18] filed in support of confirmation of the Plan.

NOTICE OF THIS RESPONSE

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

NO PRIOR REQUEST

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

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

[*signature follows*]

Dated: August 3, 2012

Respectfully submitted,

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