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 JAMES B. ANTHONY'S OBJECTION TO THE DEBTORS' PLAN OF REORGANIZATION

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 James B. Anthony's Objection to the Debtors' Plan of Reorganization (the "Anthony Objection"), pursuant to which Mr. Anthony 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 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:

[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).

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

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 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 Anthony Objection is unfounded and should be denied.

A. Mr. Anthony Does Not Have Standing to Object to Confirmation of the Plan.

9. "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)). "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)).

10. 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).

11. 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.

12. Applying the foregoing standards to the facts of this case, Mr. Anthony lacks "party in interest" standing sufficient to maintain his objection to confirmation of the Plan. Mr. Anthony is merely the majority owner of the non-debtor parent company of the Debtors. Mr. Anthony is not a creditor of the Debtors, he is not an equity holder of the Debtors, and thus he is not a statutory party in interest under Section 1109(b). Indeed, Mr. Anthony offers no argument or evidence whatsoever to show the basis on which he has standing to object to confirmation of the Plan. Because Mr. Anthony lacks standing to object to confirmation of the Plan, the Anthony Objection should be disregarded and flatly denied without even considering the Anthony Objection on its merits.

B. Mr. Anthony is Fully Aware of the Property He is Required to Transfer to Comply with any Plan Release Provisions.

13. Even if this Court determines that Mr. Anthony has standing to object to confirmation of the Plan, the Anthony Objection should be denied.

14. First, Mr. Anthony should be limited to objecting to only those aspects of the Plan that directly affect his interests, and not confirmation of the Plan as a whole. 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 a 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). Mr. Anthony's interests in the outcome of the Plan are limited to the releases he may be provided thereunder. The only nexus Mr. Anthony has to such releases under the Plan stems from his third-party negotiations with the Cliffs Club Partners, LLC, the Plan Sponsor, regarding third party asset transfers and related matters. The Debtors assert that such nexus is insufficient to grant Mr. Anthony any standing to object to the Plan at all, but at the very least Mr. Anthony's objections to confirmation of the Plan as a whole must be denied given the narrow provisions of the Plan that directly affect Mr. Anthony.

15. Moreover, Mr. Anthony's objections to the narrow provisions of the Plan that actually affect him are wholly without merit, and should be denied. Mr. Anthony complains that the Plan is vague and ambiguous with regard to the property Mr. Anthony is required to convey in order to obtain a release under the Plan (Anthony Objection, ¶ 10-12). As stated numerous times throughout the Plan and Disclosure Statement, "James B. Anthony will not receive a release without satisfaction of the following: (a) he becomes a D&O Releasee; and (b) he and any non-Debtor affiliates he directly or indirectly owns or controls: (i) waive and release any and all claims of any kind against the Debtors; (ii) transfer and convey to the Debtors or to the Plan Sponsor all real property, personal property and other assets used by the Debtors, or necessary to operate the businesses of the Debtors, or which is necessary to satisfy any condition precedent under the Plan or the Asset Purchase Agreement; (iii) fully cooperate with the transfer of the Acquired Assets, the Sale and the orderly transition of the Debtors' businesses to the Plan

Sponsor; (iv) do not object to or oppose confirmation of the Plan; (v) vote to accept the Plan to the extent he or any of them hold a Claim entitled to vote, and (vi) otherwise cooperate fully with the consummation of the Plan, including without limitation, executing and delivering any settlement agreement and complying with any and all conditions of any settlement agreement." (Plan, Introduction, Sections 3.07(b) and 7.01).

16. For months, Mr. Anthony has been engaged in communications and negotiations with representatives of the Plan Sponsor regarding precisely what he must do in order to comply with the above provisions. Mr. Anthony and the Plan Sponsor specifically have negotiated in detail what constitutes the "real property, personal property and other assets used by the Debtors, or necessary to operate the businesses of the Debtors, or which is necessary to satisfy any condition precedent under the Plan or the Asset Purchase Agreement," such that, upon delivery of same, along with satisfaction of the remaining conditions above, Mr. Anthony would be eligible for a release under the Plan. It is disingenuous at best for Mr. Anthony to object to confirmation of the Plan on the grounds that the release conditions are vague and ambiguous, when he, in fact, is one of the very people who actually knows precisely what constitutes compliance with the such conditions.

17. Furthermore, Mr. Anthony's objection to Plan confirmation on the grounds that the Plan violates Section 1129(a)(7)(A)(ii) of the Bankruptcy Code should be disregarded and denied because that section is simply inapplicable to any argument raised by Mr. Anthony. Section 1129(a)(7)(A)(ii) requires that claimants not receive less in a chapter 11 plan than such claimants would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code. The hypothetical liquidation analysis attached as Exhibit D to the Disclosure Statement clearly shows that the Plan complies with Section 1129(a)(7)(A)(ii) of the Bankruptcy Code. The

hypothetical liquidation analysis shows that, in the event of a liquidation in these cases, after payment of administrative and priority claims, only the secured claim relating to the DIP Facility would receive any distribution, and no other creditors would receive any distribution. Mr. Anthony's objection regarding the purported vagueness and ambiguity of the Plan has absolutely no nexus to such liquidation analysis. Accordingly, Mr. Anthony's arguments pursuant to Section 1129(a)(7)(A)(ii) of the Bankruptcy Code are not relevant to any confirmation standards appropriately before this Court, and should be denied.

18. Finally, it is entirely possible that Mr. Anthony and the Plan Sponsor will not reach any agreement prior to confirmation of the Plan, and that Mr. Anthony will not be eligible for any release under the Plan. Notably, by filing his objection, Mr. Anthony has already violated the release condition that he "not object to or oppose confirmation of the Plan." Accordingly, unless Mr. Anthony reaches an agreement with the Plan Sponsor, suitable for the Debtors and the Plan Sponsor to modify the release conditions above, then Mr. Anthony will not qualify for any release under the Plan and his objection regarding the vagueness of his release conditions will be entirely moot.

19. For the reasons set forth above, the Anthony Objection should be denied.

NOTICE OF THIS RESPONSE

20. 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 counsel for Mr. Anthony. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

21. 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 Anthony 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 4, 2012

Respectfully submitted,

/s/ Däna Wilkinson
Däna Wilkinson
District Court I.D. No. 4663
LAW OFFICE OF DÄNA WILKINSON
365-C East Blackstock Road
Spartanburg, SC 29301
864.574.7944 (Telephone)
864.574.7531 (Facsimile)
danawilkinson@danawilkinsonlaw.com

-and-

/s/ J. Michael Levengood
Gary W. Marsh
Georgia Bar No. 471290
J. Michael Levengood
Georgia Bar No. 447934
Bryan E. Bates
Georgia Bar No. 140856
MCKENNA LONG & ALDRIDGE LLP
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308
404-527-4000 (phone)
404-527-4198 (fax)
gmarsh@mckennalong.com
mlevengood@mckennalong.com
bbates@mckennalong.com

Attorneys for Debtors and Debtors in Possession