

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

Joint Administration Pending

MOTION FOR AUTHORITY TO RETAIN AND COMPENSATE PROFESSIONALS USED IN THE ORDINARY COURSE OF BUSINESS

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”), and move this Court for authority to retain and compensate professionals used in the ordinary course of business. In support of this Motion, the Debtors show the Court as follows:

RELIEF REQUESTED

1. By this Motion, the Debtors respectfully request the entry of an order, pursuant to Sections 105(a), 327 and 328 of the Bankruptcy Code, authorizing them to retain and compensate professionals used by the Debtors in the ordinary course of business as of the Petition Date and thereafter (the “Ordinary Course Professionals”), subject to certain monthly expenditure limitations and subject to terms of the budget attached to the orders relating to debtor in possession financing and use of cash collateral (The “DIP Budget”). Exhibit A

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).

attached hereto contains a list of the Ordinary Course Professionals identified by the Debtors as of the Petition Date.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this Motion 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

3. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

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.

6. Contemporaneously herewith, the Debtors have filed a motion seeking joint administration of their Chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

BASIS FOR RELIEF

7. The Debtors desire to continue to employ the Ordinary Course Professionals to render services to their estates similar to those services provided prior to the Petition Date. These services include: (a) tax preparation and other tax advice; (b) legal services; (c) accounting and auditing services, and (d) other relatively minor matters requiring the expertise and assistance of professionals.

8. The Debtors submit that, in light of the costs associated with the preparation of employment applications for professionals who will receive relatively small fees, it would be impractical, inefficient, and unnecessarily costly for the Debtors to submit individual applications and proposed retention orders for each professional. Accordingly, the Debtors request that this Court dispense with the requirement of individual employment applications, retention orders, and fee applications (subject to the limitation described below) with respect to each Ordinary Course Professional, and that the Debtors be permitted to employ the Ordinary Course Professionals from time to time as their services are needed.

9. The Debtors propose that each Ordinary Course Professional be required to file an affidavit, substantially in the form of Exhibit B attached hereto, stating that such professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matters on which such professional is to be employed (the "Retention Affidavit"). The Debtors will not make any payment to any Ordinary Course Professional until such professional has filed a Retention Affidavit.

10. The Debtors propose that they be permitted to pay each Ordinary Course Professional, without prior application to the Court by such professional, 100% of the fees and disbursements owed to such Ordinary Course Professional, upon the submission to and approval by both the Debtors and Wells Fargo Bank, NA as trustee (the "Indenture Trustee") of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and disbursements actually incurred; provided, however, that if any Ordinary Course Professional's fees and disbursements exceed \$10,000 in a particular month, then the payment to such Ordinary Course Professional for any amount in excess of \$10,000 per month shall be subject to the prior

approval of the Court in accordance with Sections 330 and 331 of the Bankruptcy Code; provided, further the Debtors shall only make payments provided for in the DIP Budget.

11. The Debtors propose that every ninety days (commencing ninety days from the granting of this Motion), the Debtors will file a statement with the Court, and serve the same on the Office of the United States Trustee, the Indenture Trustee and counsel for any statutory committee appointed in these cases, certifying the Debtors' compliance with the terms of the relief requested herein, which statement shall include the following information: (a) for each Ordinary Course Professional, (i) the name of such Ordinary Course Professional and (ii) the aggregate amounts paid as compensation for services rendered and for reimbursement of expenses incurred by such Ordinary Course Professional during such ninety-day period; and (b) a list of any additional Ordinary Course Professionals retained or used after the Petition Date that have not been reported to the Court previously (any such additional Ordinary Course Professional so identified will also be required to submit an affidavit substantially in the form annexed hereto as Exhibit B).

12. Although certain of the Ordinary Course Professionals may hold unsecured claims against the Debtors in respect of pre-petition services rendered to the Debtors, the Debtors do not believe that any of the Ordinary Course Professionals has an interest materially adverse to the Debtors, their creditors, or other parties in interest, and thus none would be retained who do not meet, if applicable, the special counsel retention requirement of Section 327(e) of the Bankruptcy Code.

13. The proposed ordinary-course retention and payment procedures set forth herein will not apply to those professionals for whom the Debtors have filed separate applications for approval of employment.

14. The Debtors desire to continue to employ the Ordinary Course Professionals to render services to their estates similar to those rendered prior to the Petition Date. It is essential that the employment of the Ordinary Course Professionals, who are already familiar with the Debtors' affairs, be continued on an ongoing basis to enable the Debtors to conduct, without disruption, their ordinary business affairs. The relief requested will save the Debtors the expense of separately applying for the employment of each professional. Furthermore, relieving the Ordinary Course Professionals of the requirement of preparing and prosecuting fee applications will save the estate additional professional fees and expenses. Likewise, the procedure outlined above will spare the Court and the United States Trustee from having to consider numerous fee applications involving relatively modest amounts of fees and expenses. The Debtors submit that the proposed employment of the Ordinary Course Professionals and the payment of compensation on the basis set forth above is in the best interests of the Debtors' estates and their creditors.

NOTICE

15. No trustee, examiner, or creditors' committee has been appointed in these Chapter 11 cases. Notice of this motion has been provided to (a) the Office of the United States Trustee for the District of South Carolina; (b) counsel to the Indenture Trustee (as defined in the Cherry Declaration); (c) counsel to the DIP Lender (as defined in the Cherry Declaration); (d) the Debtors' fifty (50) largest unsecured creditors (on a consolidated basis); (e) those persons who have formally appeared in the bankruptcy cases and requested service pursuant to Bankruptcy Rule 2002; and (f) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules. Because of the nature of the relief requested in this motion, the Debtors submit that no other notice need be given.

WHEREFORE, the Debtors respectfully request that this Court:

- (a) enter an order substantially in the form annexed hereto as Exhibit C authorizing the Debtors to retain and compensate the Ordinary Course Professionals in the ordinary course of business; and
- (b) grant the Debtors such other and further relief as is just and proper.

Dated: February 28, 2012

Respectfully submitted,

/s/ Däna Wilkinson
Däna Wilkinson
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-and-

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Proposed Attorneys for Debtors and Debtors in Possession

Exhibit A

ORDINARY COURSE PROFESSIONALS

Professional	Firm	Address	Services
Bob Long	Long Parker Warren & Payne	14 South Pack Square, Suite 600, Asheville NC 28801	Legal Services: litigation
Rivers Stilwell	Nelson Mullins	104 S. Main Street, Suite 900 Greenville SC 29601	Legal Services: litigation
Bo Russell and Neil Grayson	Nelson Mullins	104 S. Main Street, Suite 900 Greenville SC 29601	Legal Services: corporate
Brian Kernighan	Nexsen Pruet, LLC	101 Johnson Ave, Suite 300 Myrtle Beach, SC 29577	Legal Services: membership
Phillip Kilgore	Ogletree Deakins Nash	301 N Main Street, Greenville SC 20605	Legal Services: employment
J. Darryl Holland	J. Darryl Holland, Attorney at Law	722 E. McBee Avenue, Greenville, SC 29601	Legal Services: real estate
Greg Hayes	Moore Stephens Tiller, LLC	1960 Satellite Blvd, Ste 3600 Duluth, GA 30092	Audit services
Mark Cooter	Elliott Davis, LLC	P.O. Box 6286 Greenville, SC 29606-6286	Tax & accounting services

Exhibit B

FORM OF RETENTION AFFIDAVIT

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

Joint Administration Pending

DECLARATION AND DISCLOSURE STATEMENT OF _____
ON BEHALF OF [FIRM]

I, _____, hereby state and declare as follows:

1. I am a partner in the firm of [Firm], a _____ firm that maintains an office at _____. I am duly authorized to make this Declaration on behalf of [Firm], and I make this Declaration pursuant to the Order Authorizing Debtors to Retain and Compensate Professionals Used in the Ordinary Course of Business entered in these cases. The facts set forth in this Declaration are personally known to me, and, if called as a witness, I could and would testify thereto.

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. [Firm] has been engaged by The Cliffs Club & Hospitality Group, Inc. and/or its affiliated debtors in the above-captioned chapter 11 cases (collectively, the "Debtors"), to provide the following services: _____.

3. To the best of my knowledge, information, and belief formed after reasonable inquiry, (a) neither I nor [Firm] holds or represents any interest adverse to the Debtors or their estates with respect to the matters on which [Firm] is to be employed; and (b) neither I, nor any other partner in or professional employed by [Firm] is a relative of the bankruptcy judge presiding in these cases or of the United States Trustee for this region.

4. Neither I nor any partner in or professional employed by [Firm] has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the partners and regular employees of [Firm].

5. The Debtors owe [Firm] \$_____ for services rendered prior to the Petition Date.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on _____, 2012, at _____.

[Name]

Exhibit C

ORDER

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

Case No. 12-01220

**ORDER AUTHORIZING DEBTORS TO RETAIN AND COMPENSATE
PROFESSIONALS USED IN THE ORDINARY COURSE OF BUSINESS**

The relief set forth on the following pages, for a total of 5 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 d/b/a The Cliffs Golf & Country Club,**

Debtors.

CHAPTER 11

Case No. 12-01220

Joint Administration Pending

**ORDER AUTHORIZING DEBTORS TO RETAIN AND COMPENSATE
PROFESSIONALS USED IN THE ORDINARY COURSE OF BUSINESS**

This matter is before the Court on the motion of 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”), for authority to retain and compensate certain professionals used in the ordinary course of business (the “Motion”).² The Court has considered the Motion, the Declaration of Timothy P. Cherry in Support of First Day Motions, and the matters reflected in the record of any hearing held on the Motion. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that notice of the Motion has been given to the Office of the United States Trustee, counsel for the Debtors’ secured lenders, and the Debtors’ fifty largest unsecured creditors on a consolidated basis; that no further notice is

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² Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

necessary; that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion is GRANTED.
2. The Debtors are authorized to retain Ordinary Course Professionals without further application to or approval of this Court, specifically including those Ordinary Course Professionals listed in Exhibit A to the Motion.
3. Each Ordinary Course Professional shall file with this Court a Retention Affidavit, substantially in the form of Exhibit B attached to the Motion, stating that such professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matters on which such professional is to be employed.
4. Subject to the DIP Budget, the Debtors are authorized to compensate and reimburse expenses to each of the Ordinary Course Professionals retained pursuant to this Order in the customary manner, in the full amount billed by each such professional, upon receipt by the Debtors and the Indenture Trustee of a sufficiently detailed invoice indicating the nature of the services rendered and calculated in accordance with such professional's standard billing practices (without prejudice to the Debtors' rights to dispute any such invoices), up to \$10,000 per month per such professional (the "Fee Cap"). Any payment in excess of the Fee Cap to any Ordinary Course Professional shall be subject to the prior approval of this Court in accordance with sections 330 and 331 of the Bankruptcy Code.
5. The Debtors shall not make any payment to an Ordinary Course Professional that has not filed a Retention Affidavit.

6. Every ninety (90) days (commencing ninety (90) days from the date hereof), the Debtors shall file a statement with this Court certifying their compliance with this Order, which statement shall include the following information: (a) for each Ordinary Course Professional, (i) the name of such Ordinary Course Professional and (ii) the aggregate amounts paid as compensation for services rendered and for reimbursement of expenses incurred by such Ordinary Course Professional during such ninety-day period; and (b) a list of any additional Ordinary Course Professionals that are retained or used after the Petition Date and that have not been reported to the Court previously. Such statement shall be served on the Office of the United States Trustee and on counsel for any official committee appointed in these cases.

7. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of this Court.

8. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

AND IT IS SO ORDERED.

Prepared and presented by:

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