

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 TO ESTABLISH PROCEDURES FOR
MONTHLY COMPENSATION AND REIMBURSEMENT
OF EXPENSES OF PROFESSIONALS

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 hereby move for entry of an order, pursuant to sections 105(a) and 331 of Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), establishing procedures by which professionals approved under sections 327 or 1103 of the Bankruptcy Code by the Court in these bankruptcy cases may obtain monthly payment of their fees and expenses, subject to review and adjustment in connection with regular fee applications (the “Motion”). In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of Timothy P. Cherry in Support of First Day Motions (the “Cherry Declaration”), filed concurrently herewith. In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

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).

BACKGROUND

1. On the date hereof (the "Petition Date"), the Debtors filed their voluntary petitions for relief under the Bankruptcy Code. The Debtors are authorized to operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. No creditors' committee has been appointed by the United States Trustee in these Chapter 11 cases. No trustee or examiner has been appointed in these Chapter 11 cases.

3. 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 Cherry Declaration filed with the Court.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these bankruptcy cases and with respect to this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

REQUESTED RELIEF

5. By this Motion, the Debtors respectfully request the entry of an order, pursuant to sections 105(a) and 331 of the Bankruptcy Code and Rules 2014 and 2016 of the Bankruptcy Rules, establishing procedures by which each professional retained by the Debtors or any official committee appointed in these bankruptcy cases under sections 327 and 1103 of the Bankruptcy Code (the "Professionals" and each a "Professional") may obtain monthly payment of its fees and expenses, subject to review and adjustment in connection with regular fee applications filed with the Court.

BASIS FOR RELIEF

6. Concurrent with this filing, the Debtors seek approval of employment of several professionals in these bankruptcy cases: McKenna Long & Aldridge LLP, as bankruptcy counsel; The Law Office of Däna Wilkinson, as local bankruptcy counsel; GGG Partners, LLC ("GGG"), as financial advisor (inclusive of the retention of Katie S. Goodman as Chief Restructuring Officer of the Debtors); and BMC Group, Inc. ("BMC"), as claims, noticing, and balloting agent. The Debtors anticipate that they may need to retain other professionals as these bankruptcy cases progress. The Debtors also anticipate that any official committee, including an official committee of unsecured creditors (the "Committee"), if formed, will need to retain professionals in these bankruptcy cases under section 1103 of the Bankruptcy Code.

7. Under 11 U.S.C. § 331, each professional person is limited to applying for interim compensation not more than once every one hundred twenty (120) days after the order for relief, unless the Court authorizes applications for interim compensation more frequently, and to the extent section 331 applies to that professional's retention. The Debtors have requested authorization to compensate GGG and BMC without formal fee applications or other filings with this Court, on the basis that neither GGG nor BMC is a "professional" whose retention is subject to approval under section 327 of the Bankruptcy Code or whose compensation is subject to approval of the Court under sections 330 and 331 of the Bankruptcy Code. If GGG's and BMC's retention applications are granted as requested, then the procedures set forth in this Motion will not apply to GGG or BMC, and the compensation of both GGG and BMC will be governed by the Orders approving their retention by the Debtors.

8. The Debtors believe that the relief requested in this Motion will streamline the professional compensation process and enable the Court and all other parties to monitor the professional fees incurred in these bankruptcy cases more effectively. Briefly stated, the

requested procedures would permit each Professional to serve on: (a) counsel for the Debtors; (b) the Office of the United States Trustee for the District of South Carolina; (c) counsel to the Indenture Trustee (as defined in the Cherry Declaration); (d) counsel to the DIP Lender (as defined in the Cherry Declaration); and (e) counsel for the Official Committee of Unsecured Creditors, if appointed (collectively, the "Notice Parties"), a statement of fees and expenses incurred by the Professional during the immediately preceding month (a "Monthly Statement").

9. Any Notice Party receiving such Monthly Statement shall have fourteen (14) days from the date of service within which to file and serve upon the subject Professional and the Notice Parties a written objection to such Monthly Statement, which objection shall specifically identify the time and/or expense objected to and shall state the reason(s) for such objection.

10. If no written objection is received to a Monthly Statement within fourteen (14) days of service, as stated above, then the Debtors shall be authorized to pay 80% of the fees and 100% of the expenses in the requesting Professional's Monthly Statement; provided that, unless otherwise authorized by the Court, the Debtors shall not pay any Professional an amount that is not authorized under any applicable cash collateral or debtor in possession financing order. If a written objection to a Monthly Statement is timely filed, then the portion of the Monthly Statement that is not in dispute shall nevertheless be paid by the Debtors (up to 80% of fees and 100% of expenses). The portion of the Monthly Statement that is in dispute shall not be paid unless and until an order of the Court directs such payment or until such objection is withdrawn.

11. All fees and expenses of each Professional, whether or not paid or objected to in connection with a Monthly Statement, shall remain subject to review and approval by the Court in connection with interim and final fee applications under sections 330 and 331 of the Bankruptcy Code, and any party may file an objection to an interim and/or final fee application notwithstanding the fact that such party did not file an objection to a Monthly Statement.

12. Interim payments received in accordance with the procedures outlined above shall be applied to the fees and expenses itemized, subject to disgorgement or offset if such fees are not approved by the Court.

13. Section 331 of the Bankruptcy Code, which generally permits professionals to file fee applications every one hundred twenty (120) days, expressly contemplates that professionals may be compensated more frequently if the court permits. Bankruptcy courts, including courts in this region, regularly allow professionals to seek and receive compensation on a monthly basis. *See, e.g., In re BI-LO, LLC*, Case No. 09-2140 (HB) (Bankr. D.S.C. 2009); *In re Allied Holdings, Inc.*, Case Nos. 05-12515 05-12537 (Bankr. N.D. Ga. Aug. 24, 2005) (Drake, J.); *In re Metalforming Techs., Inc.*, Case No. 05-11697 (MFW) (Bankr. D. Del. July 18, 2005); *In re Am. Online Latin Am., Inc.*, Case No. 05-11778 (MFW) (Bankr. D. Del. July 14, 2005); *In re Rhodes*, Case Nos. 04-78434 04-78436 (Bankr. N.D. Ga. Nov. 8, 2004) (Diehl, J.); *In re The New Power Co.*, Case No. 02-10835 (Bankr. N.D. Ga. July 25, 2002) (Drake, J.); *In re Centennial HealthCare Corp.*, Case No. 02-74974 (Bankr. N.D. Ga. Feb. 6, 2003) (Massey, J.); *In re Pike Nursery Holding, LLC*, Case No. 07-79129 (Bankr. N.D. Ga. Nov. 14, 2007) (Diehl, J.)

14. In addition to minimizing the financial hardship on the Professionals, who must invest significant resources in these bankruptcy cases, monthly compensation procedures will enable the Debtors and all Notice Parties to monitor the costs of administration of these estates, forecast cash flow levels, and implement efficient cash management procedures. Moreover, the proposed procedures will allow the Court and parties in interest, including the United States Trustee, to ensure the reasonableness and necessity of compensation sought in these bankruptcy cases.

15. For the foregoing reasons, the Debtors believe that granting the relief requested in this Motion is appropriate and in the best interests of the Debtors, the Debtors bankruptcy estates, and all creditors and parties in interest.

NOTICE

16. No trustee, examiner, or creditors' committee has been appointed in these Chapter 11 cases. Notice of this Motion will be given 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 these 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. The Debtors submit that, under the circumstances, no other or further notice is required.

17. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, based upon the foregoing, the Debtors respectfully request that the Court enter an order substantially in the form annexed hereto (a) granting the relief requested herein and (b) granting such other relief as may be deemed just and proper.

Dated: February 28, 2012

Respectfully submitted,

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

Case No. 12-01220

**ORDER ESTABLISHING PROCEDURES
FOR MONTHLY COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

The relief set forth on the following pages, for a total of 6 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 ESTABLISHING PROCEDURES
FOR MONTHLY COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Upon the motion [Docket Entry No. ____] (the "Motion")² of the Debtors for an order pursuant to sections 105(a) and 331 of the Bankruptcy Code and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure, establishing procedures by which professionals approved under section 327 of the Bankruptcy Code by the Court in the above captioned bankruptcy cases may obtain monthly payment of their fees and expenses, subject to review and adjustment in connection with regular fee applications; the Court having reviewed the Motion; the Court having determined that the relief requested in this Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; it appearing that notice of the Motion was good and sufficient under the particular circumstances and that no other or further

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

notice need be given; upon the record herein; after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED.

2. Except as may otherwise be provided in an order of this Court authorizing the retention of a specific professional, and except as to the retention of BMC and GGG, as set forth in the Motion, any professional retained by the Debtors or any official committee appointed in these bankruptcy cases, whose retention is approved by this Court pursuant to section 327 or section 1103 of the Bankruptcy Code (the "Professionals" and each a "Professional") may seek monthly compensation in accordance with the following procedures: –

- (a) After the end of a month for which compensation is sought, each Professional seeking compensation must serve a monthly statement (the "Monthly Statement") on the Notice Parties;
- (b) Each Monthly Statement shall contain a list of individuals and respective titles who provided services during the statement period, respective billing rates, the aggregate hours spent by each individual, contemporaneously maintained time entries for each individual in increments of tenths of an hour, and a reasonably detailed breakdown of disbursements incurred;
- (c) In the event that a Notice Party has an objection to the compensation or reimbursement sought in a particular Monthly Statement, the objecting party shall, within fourteen (14) days after service of the Monthly Statement, serve upon the Professional whose statement is objected to and upon all of the Notice Parties a written Notice of Objection to Fee Statement, setting forth the nature of the objection and the amount of fees or expenses at issue;
- (d) After the expiration of the fourteen (14) day period described above, to the extent permitted under any applicable cash collateral or debtor in possession financing order, the Debtors shall pay 80% of the fees and 100% of the expenses identified in each Monthly Statement to which no objection has been specifically served, to the extent permitted under any applicable cash collateral or debtor in possession financing order;
- (e) If the Debtors receive an objection to a particular Monthly Statement, they shall withhold payment of that portion of the Monthly Statement to which

the objection is specifically directed and shall promptly pay the remainder of the fees and expenses set forth in the Monthly Statement (subject to the 80% limit of interim payment of fees referenced above), to the extent permitted under any applicable cash collateral or debtor in possession financing order;

- (f) If any objecting party resolves a dispute with a Professional, the objecting party (or the Debtors, with the consent of the objecting party) shall serve a written notice on the Professional whose statement is objected to and upon counsel for the Debtors, as well as the Notice Parties, that the objection is withdrawn and shall generally describe the terms of the resolution. The Debtors shall promptly pay that portion of the Monthly Statement at issue that is no longer subject to an objection (subject to the 80% limit on interim payment of fees referenced above), to the extent permitted under any applicable cash collateral or debtor in possession financing order;
- (g) Any objection that is not resolved by the parties shall be preserved and presented to the Court at the next interim or final fee application hearing.

3. The lack of an objection in accordance with paragraph (c) above shall not prejudice the objecting party's right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground, whether raised in an objection to the Monthly Statement or not. Furthermore, the decision by any party not to object to a Monthly Statement shall not be deemed as a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court.

4. Approximately every one hundred twenty (120) days, each Professional may serve and file with the Court, pursuant to sections 330 and 331 of the Bankruptcy Code and Rule 2016 of the Bankruptcy Rules, an application for interim or final approval and allowance of compensation and reimbursement of expenses, including compensation previously paid by the Debtors on the basis of a Monthly Statement.

5. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation or reimbursement of expenses of any Professional.

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

7. The Debtors shall, within three (3) business days hereof, serve a copy of this Order on all parties that received notice of the Motion, as well as all parties that have appeared in these cases and requested notice since the Debtors filed the Motion, and file a certificate of service evidencing such service.

AND IT IS SO ORDERED.

Prepared and presented by:

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