

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

In re:

The Cliffs Club & Hospitality Group, Inc., *et al.*,<sup>1</sup> d/b/a The Cliffs Golf & Country Club,

Debtors.

CHAPTER 11

Case No. 12-01220

Joint Administration Pending

**MOTION OF DEBTORS FOR ORDER AUTHORIZING (I) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (II) CONTINUED USE OF EXISTING BANK ACCOUNTS, (III) AUTHORIZING CONTINUED USE OF EXISTING BUSINESS FORMS, AND (IV) GRANTING A WAIVER OF INVESTMENT AND DEPOSIT REQUIREMENTS**

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 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”), and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing, but not directing (i) the continued maintenance and use of the Debtors’ existing cash management system, (ii) the continued maintenance and use of the Debtors’ existing bank accounts, (iii) the continued use of existing business forms and checks; and (iv) a waiver of investment and deposit requirements (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, filed

<sup>1</sup> 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).

concurrently herewith (the "Cherry Declaration"). In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

### **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. The predicates for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 6003.

### **BACKGROUND**

2. 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 Debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. 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.

4. A description of the Debtors' business, 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.

### **RELIEF REQUESTED**

5. By this Motion, the Debtors seek entry of an order (the "Order"), pursuant to sections 105(a) and 363 of the Bankruptcy Code, authorizing (a) the continued maintenance and use of the Debtors' existing cash management system, (b) the continued maintenance and use of the Debtors' existing bank accounts, (c) the continued use of existing business forms and checks, and (d) a waiver of investment and deposit requirements.

**BASIS FOR RELIEF**

**A. The Debtors Should Be Authorized To Continue To Use Their Existing Cash Management System**

6. Before the commencement of these Chapter 11 cases, the Debtors used independent cash management systems to collect, transfer and disburse funds generated by their operations and to accurately record all such transactions as they are made (collectively, the “Cash Management System”) in the ordinary course of business.

7. The Cash Management System consists primarily of seven (7) active bank accounts at The National Bank of South Carolina (“NBSC”), Bank of Travelers Rest, and Park Sterling Bank (CapitalBank) utilized by the Debtors through which the Debtors are able to manage cash receipts and disbursements (collectively, the “Bank Accounts”). The Bank Accounts at NBSC and Park Sterling Bank (CapitalBank) are held in the name of The Cliffs Club & Hospitality Service Company, LLC, which is the service company Debtor entity that employs the personnel who operate the amenities at the Debtors’ clubs, and which Debtor entity operates and manages the Debtors’ Cash Management System for the benefit of all the Debtors. The Bank Account at Bank of Travelers Rest is held in the name of The Cliffs at Walnut Cove Golf & Country Club, LLC, which account is denominated as a petty cash account used in connection with the operations of that facility, from which checks are drafted to North Carolina vendors for liquor purchases. A schedule of the Bank Accounts maintained by the Debtors, including the names and addresses of the institutions, the general purpose of the Bank Accounts, and the Bank Account numbers, is attached as Exhibit A hereto.

8. The Debtors’ Cash Management System involves an integrated network of separate accounts to manage and control receipts and disbursements. The Cash Management System is centralized at the Debtors’ corporate offices and allows the Debtors, through the use of

accounting software, to track their cash situation on a daily basis. The Debtors' Cash Management System is similar to those commonly employed by corporate enterprises of comparable size and scope. The Debtors' Cash Management System enables the Debtors' management to quickly and accurately create reports on the status, location and availability of funds and helps to facilitate the movement of such funds.

9. In the ordinary course of business, the Debtors maintain two operating accounts, one at NBSC and one at Capital Bank (the "Operating Accounts"), from which the Debtors pay operating expenses and into which the Debtors deposit payments received in the ordinary course of business. The Debtors maintain two payroll accounts, one at NBSC and one at Capital Bank (the "Payroll Accounts"), to pay all of their employees. The Debtors maintain two credit card accounts, one at NBSC and one at Capital Bank (the "Credit Card Accounts"), in which to deposit payments received from credit card transactions. The Credit Card Account at NBSC is designated as a credit card control account, and the Credit Card Account at Capital Bank is designated as a credit card sweep account. Finally, the Debtors maintain a petty cash account at the Bank of Traveler's Rest.

10. In sum, the Debtors' Cash Management System allows for (a) overall corporate control of funds, (b) cash availability when and where needed by the Debtors, and (c) the reduction of administrative costs through a method of coordinating funds collection and movement. The Debtors' smooth transition into, and out of, Chapter 11 depends on their ability to maintain these Bank Accounts and operate this Cash Management System without interruption. The Cash Management System allows the Debtors to manage all of their cash flow needs and includes the necessary accounting controls to enable the tracing of funds through the system to ensure that all transactions are adequately documented and readily ascertainable. The

Debtors will continue to maintain detailed records reflecting all transfers of funds. The cash management procedures utilized by the Debtors constitute ordinary, usual and essential business practices and are similar to those used by other major corporate enterprises.

11. In furtherance of this goal, the Debtors request that all banks at which the Bank Accounts are maintained (the "Banks") be authorized and directed to continue to administer the Bank Accounts as such accounts were maintained prepetition, without interruption and in the usual and ordinary course, and to pay any and all checks, drafts, wires, or electronic funds transfers presented, issued or drawn on the Bank Accounts on account of a claim arising on or after the Petition Date, provided that sufficient funds are in such Bank Accounts.

12. The Debtors further request that the Banks be restrained from honoring any check, draft, wire or electronic funds transfer presented, issued or drawn on the Bank Accounts on account of a prepetition claim unless (i) authorized by an order of this Court, (ii) not otherwise prohibited by a "stop payment" request received by the Banks from the Debtors, and (iii) supported by sufficient funds in the Bank Account in question.

13. To effectuate the foregoing, the Debtors request that the Banks be authorized and directed to honor all representations from the Debtors as to which checks should be honored or dishonored. To the extent that the Debtors have directed that any prepetition checks be dishonored, they reserve the right to issue replacement checks to pay the amounts related to such dishonored checks consistent with the orders of this Court.

14. The operation of the Debtors' businesses requires that the Cash Management System continue during the pendency of these Chapter 11 cases. Requiring the Debtors to adopt a new, segmented cash management system at this early and critical stage of these Chapter 11 cases would be expensive, would create unnecessary administrative problems, and would be

much more disruptive than productive. Any such disruption could have an adverse impact upon the Debtors' ability to reorganize.

15. Allowing the Debtors to utilize their prepetition Cash Management System is entirely consistent with applicable provisions of the Bankruptcy Code. Bankruptcy courts routinely permit Chapter 11 Debtors to continue using their existing cash management system, generally treating such requests for relief as a relatively "simple matter." *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); *see also, In re Columbia Gas Sys., Inc.*, 136 B.R. 830, 934 (Bankr. D. Del. 1992) (recognizing that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash"), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993), *cert. denied*, sub nom. *Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp.*, 510 U.S. 1110 (1994); *Charter Co. v. Prudential Ins. Co. of Am. (In re Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (holding that allowing the debtors to use their prepetition "routine cash management system" was entirely consistent with applicable provisions of the Bankruptcy Code).

16. Further, the continued postpetition use of cash management systems also has been approved as a routine matter in similar large bankruptcy cases, including in this district. *See, e.g., In re Bi-Lo, LLC*, Case No. 09-02140 (Bankr. D.S.C. 2009); *In re Circuit City Stores, Inc.*, Case No. 08-35653 (Bankr. E.D. Va. Nov. 10, 2008); *In re Georgetown Steel Company, LLC*, Case No. 03-13156 (Bankr. D.S.C. Oct. 24, 2003)).

17. The Debtors respectfully submit that under the circumstances, the maintenance of the Debtors' Cash Management System in substantially the same form as it existed prior to the Petition Date is in the best interests of the Debtors' estates and creditors. Preserving a "business

as usual” atmosphere and avoiding the unnecessary distractions that inevitably would be associated with any substantial changes to the Cash Management System will: (a) facilitate the Debtors’ stabilization of their postpetition business operations; and (b) assist the Debtors in their reorganization efforts.

18. The Debtors therefore request authority to continue utilizing their Cash Management System as outlined herein.

**B. The Debtors Should Be Authorized To Maintain Their Existing Bank Accounts**

19. The Office of the United States Trustee has established certain operating guidelines for debtors-in-possession in order to supervise the administration of Chapter 11 cases. These guidelines require a Chapter 11 debtors to, among other things: (i) close all existing bank accounts and open new debtor-in-possession bank accounts; (ii) establish one debtor-in-possession account for all estates monies required for the payment of taxes, including payroll taxes; (iii) maintain a separate debtor-in-possession account for cash collateral; and (iv) obtain checks for all debtor-in-possession accounts which bear the designation “debtor-in-possession,” the bankruptcy case number and the type of accounts. These requirements are designed to draw a clear line of demarcation between prepetition and postpetition transactions and operations and prevent the inadvertent postpetition payment of prepetition claims. Pursuant to sections 105(a) and 363 of the Bankruptcy Code, the Debtors seek a waiver of these requirements and authorization to continue using their existing bank accounts.

20. As noted above, before the Petition Date, the Debtors maintained the Bank Accounts, out of which it managed cash receipts and disbursements. The Debtors routinely deposit, withdraw and otherwise transfer funds to, from and among the Bank Accounts by various methods, including check, wire transfer, automated clearing house transfer, internal bank

transfer and electronic funds transfer. The Debtors complete numerous transactions per month through the Bank Accounts.

21. The Debtors seek a waiver of the United States Trustee's requirement that the Bank Accounts be closed and that new accounts be opened after the Petition Date. If enforced in these Chapter 11 cases, such requirements would cause considerable disruption in the Debtors' businesses, thereby impairing their efforts to reorganize. The Debtors' Bank Accounts are a part of a carefully constructed cash management system that permits the Debtors to fund their ongoing operations in a streamlined and cost-efficient manner. In order to avoid delays in payments to administrative creditors and to ensure as smooth a transition into Chapter 11 as possible with minimal disruption, it is important that the Debtors be permitted to maintain their existing Bank Accounts. This relief is also necessary to aid the Debtors in their efforts to successfully and rapidly complete a restructuring of their businesses.

22. The Debtors represent that if the relief requested in this Motion is granted, they will not pay, and each of the Banks at which the Bank Accounts are maintained, will be directed not to pay, any debts incurred by the Debtors before the Petition Date other than as authorized by this Court. The Debtors will continue to work closely with the Banks that maintain the Bank Accounts against which checks are drawn in order to ensure that appropriate procedures are in place so that checks issued before the Petition Date on account of obligations of the Debtors, but presented after the Petition Date, will not be honored absent approval from this Court. Accordingly, in order to avoid delays in payments to administrative creditors, to ensure as smooth a transition into Chapter 11 as possible with minimal disruption, and to aid the Debtors' efforts to complete these Chapter 11 cases successfully and rapidly, the Debtors should be permitted to continue to maintain their existing Bank Accounts, notwithstanding the fact that not



all of the Bank Accounts are at banks designated as approved depositories in the District of South Carolina by the United States Trustee, though the Debtors note that NBSC is an approved depository in the District of South Carolina by the United States Trustee.

23. Authority to continue the use of bank accounts has been granted in other chapter 11 cases. *See, e.g., In re Bi-Lo, LLC*, Case No. 09-02140 (Bankr. D.S.C. Mar. 24, 2009); *Polymer Group, Inc.*, Case No. 02-05773 (Bankr. D.S.C. July 2, 2002).

**C. The Debtors Should Be Granted Authority To Continue To Use Existing Business Forms And Checks**

24. In order to minimize expenses to their estates, the Debtors also seek authorization to continue using all correspondence and business forms (including without limitation, letterhead, purchase orders, and invoices), without reference to the Debtors' status as debtors-in-possession. Most parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors-in-possession as a result of the notoriety of these Chapter 11 cases, the press releases issued by the Debtors, and any additional press coverage. Moreover, each of the Debtors' vendors will receive direct notice of the commencement of these Chapter 11 cases.

25. Changing correspondence and business forms would be expensive, unnecessary, and burdensome to the Debtors' estates and disruptive to the Debtors' business operations, and would not confer any benefit upon those dealing with the Debtors. For these reasons, the Debtors request that they be authorized to use existing checks and business forms without being required to place the label "debtor-in-possession" on each.

26. Relief similar to that requested in sections A, B and C herein has been granted by courts in other substantial Chapter 11 cases. *See, e.g., In re Bi-Lo, LLC*, Case No. 09-02140 (Bankr. D.S.C. Mar. 24, 2009); *In re Polymer Group, Inc.*, Case No. 02-05773 (Bankr. D.S.C. July 2, 2002); *In re TitleMax Holdings, LLC*, Case No. 09-40805 (Bankr. S.D. Ga.

Apr. 23, 2009) (Davis, J.); *In re Durango Georgia Paper Co.*, Case No. 02-21669 (Bankr. S.D. Ga. Nov. 26, 2002) (Davis, J.); *In re Friedman's Inc.*, Case No. 05-40129 (Bankr. S.D. Ga. Jan. 20, 2005) (Davis, J.); *In re AtheroGenics, Inc.*, Case No. 08-78200 (Bankr. N.D. Ga. Oct. 16, 2008) (Massey, J.); *In re Foamex Int'l. Inc.*, Case No. 05-12685 (Bankr. D. Del. Sept. 21, 2005) (Walsh, J.); *In re Meridian Auto. Systems-Composites Ops., Inc.*, No. 05-11168 (Bankr. D. Del. Apr. 27, 2005) (Walrath, J.); *In re Rhodes, Inc.*, Case No. 04-78434 (Bankr. N.D. Ga. Nov. 5, 2004) (Diehl, J.); *In re Galey & Lord, Inc.*, Case No. 04-43098 (Bankr. N.D. Ga. Aug. 19, 2004) (Diehl, J.); *In re Dan River Inc.*, Case No. 04-10990 (Bankr. N.D. Ga. Apr. 1, 2004) (Drake, J.); *In re SHC, Inc.*, Case No. 03-12002 (Bankr. D. Del. July 2, 2003) (MFW); *In re Centennial HealthCare Corp.*, Case No. 02-74974 (Bankr. N.D. Ga. Dec. 24, 2002) (Massey, J.); *In re The New Power Co.*, No. 02-10835 (Bankr. N.D. Ga. June 17, 2002) (Drake, J.); *In re Grant Broad., Inc.*, 75 B.R. 819, 820 (E.D. Pa. 1987) (referring to order authorizing use of cash collateral and pre-petition bank accounts); *In re New York City Shoes, Inc.*, 78 B.R. 426, 427 (Bankr. E.D. Pa. 1987) (Debtors depositing post-petition funds into pre-petition bank accounts).

**D. The Debtors Should Be Granted A Waiver of the Investment and Deposit Requirements**

27. The Debtors believe that all of the Bank Accounts are financially stable banking institutions with FDIC insurance (up to applicable limits).

28. The Debtors believe that their use of the Bank Accounts substantially conforms with the approved investment and deposit practices identified in Bankruptcy Code section 345, and that all money deposits are safe and prudent and yield, under the circumstances, the maximum reasonable net return on such money. Nonetheless, out of an abundance of caution, to the extent that such deposits do not conform with the approved practices identified in Bankruptcy

Code section 345, the Debtors seek to have such requirements waived so as to allow the applicable banking institutions to accept and hold the Debtors' funds consistent with prepetition practices.

29. The Debtors believe that sufficient cause exists pursuant to Bankruptcy Code section 345(b) to allow it to deviate from the approved investment practices established by the Bankruptcy Code. Accordingly, the Debtors respectfully request authority (a) to continue depositing funds in a safe and prudent manner, in accordance with the Debtors' prepetition practices notwithstanding that such practices may not strictly comply in all respects with the approved investment practices set forth in Bankruptcy Code section 345, and (b) for the applicable institutions to accept and hold or invest such funds in accordance with the Debtors' prepetition practices.

30. Section 345 of the Bankruptcy Code authorizes deposits or investments of money of a bankruptcy estates, such as cash, in a manner that will "yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States" (11 U.S.C. § 345(b)), section 345(b) of the Bankruptcy Code provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety, "unless the court for cause orders otherwise." *Id.*

31. A court may relieve a debtor-in-possession of the restrictions of Bankruptcy Code section 345(b) on a final basis for "cause." The Debtors believe that "cause" exists to waive the investment and deposit restrictions pursuant to Bankruptcy Code section 345(b). Courts have

considered a number of factors in seeking to determine whether “cause” exists pursuant to Bankruptcy Code section 345(b). *See In re Serv. Merch. Co.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (identifying various factors relevant to the existence of “cause”, including the sophistication and size of the Debtors’ business, the amounts of the investments involved, bank ratings, the complexity of the case, the Debtors’ safeguards for the funds, the Debtors’ ability to reorganize in the face of failure of one or more of the financial institutions, the benefit to the Debtors of a waiver of the section 345(b) requirements, the potential harm to the estates, and the reasonableness of such a waiver under the circumstances).

32. Congress has emphasized that Bankruptcy Code section 345’s investment and deposit requirements may be “wise in the case of a smaller Debtors with limited funds that cannot afford a risky investment to be lost, [but such requirements] can work to needlessly handcuff [a] larger, more sophisticated debtor.” H.R. Rep, 103-834, 103d Cong., 2d Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10767 (Oct. 4, 1994). Thus, Congress added the waiver clause in section 345(b) “to allow the courts to approve investments other than those permitted by section 345(b) for just cause, thereby overruling *In re Columbia Gas Sys., Inc.*, 33 F.3d 294, 1994 WL 463514 (3d Cir. Del.).” *Id.*

33. The Debtors believe that “cause” exists to waive the investment and deposit restrictions pursuant to section 345(b) of the Bankruptcy Code to the extent that the Debtors’ cash management deposits do not comply. Further, the Debtors do not make any short-term or long-term investments given their current Cash Management System. To the extent that any Bank Account is construed to have a balance substantial enough to fall within the ambit of the protections provided by section 345 of the Bankruptcy Code, the Debtors believe that the safety presented by the financially stable banking institutions with whom the Debtors bank constitutes

sufficient cause pursuant to section 345(b) of the Bankruptcy Code to allow the Debtors to deviate from approved investment and deposit practices established by the Bankruptcy Code. Additionally, to the extent that any of the financial institutions with whom the Debtors bank are not listed among the United States Trustee's approved depositories and further information is so required by the United States Trustee, the Debtors will confer with the United States Trustee and provide such information in advance of any final hearing, if necessary. Accordingly, the Debtors respectfully request authority to maintain their Bank Accounts in a safe and prudent manner in accordance with their existing banking practices.

34. The Debtors submit that, given the totality of the circumstances, their request is reasonable and cause exists for the Court to waive the requirements of section 345(b). Relief similar to that requested herein has been granted by courts in other substantial Chapter 11 cases. *See, e.g., In re TitleMax Holdings, LLC*, Case No. 09-40805 (Bankr. S.D. Ga. Apr. 23, 2009) (Davis, J.) [Docket No. 30]; *In re Pike Nursery Holding, LLC*, Case No. 07-79129 (Bankr. N.D. Ga. Nov. 16, 2007) (Diehl, J.) [Docket No. 41]; *In re Friedman's Inc.*, Case No. 05-40129 (Bankr. S.D. Ga. Jan. 20, 2005) (Davis, J.) [Docket No. 56]; *In re Foamex Int'l. Inc.*, Case No. 05-12685 (Bankr. D. Del. Sept. 21, 2005) (Walsh, J.) [Docket No. 39]; *In re Meridian Auto. Systems-Composites Ops., Inc.*, No. 05-11168 (Bankr. D. Del. Apr. 27, 2005) (Walrath, J.) [Docket No. 27]; *In re Rhodes, Inc.*, Case No. 04-78434 (Bankr. N.D. Ga. Nov. 5, 2004) (Diehl, J.) [Docket No. 39]; *In re Centennial HealthCare Corp.*, Case No. 02-74974 (Bankr. N.D. Ga., December 24, 2002) (Massey, J.) [Docket No. 43].

**E. Bankruptcy Rule 6003 has Been Satisfied and Bankruptcy Rule 6004 Should be Waived**

35. The Debtors further submit that because the relief requested is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

36. To successfully implement the foregoing, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h).

**NOTICE**

37. 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 these bankruptcy cases and requested service pursuant to Bankruptcy Rule 2002; (f) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules; and (g) the financial institutions at which the Bank Accounts listed on Exhibit A are maintained. The Debtors submit that, under the circumstances, no other or further notice is required.

**NO PRIOR REQUEST**

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

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter an Order, substantially in the form annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: February 28, 2012

Respectfully submitted,

/s/ Dăna Wilkinson

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-and-

/s/ J. Michael Levengood

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*Proposed Attorneys for Debtors and Debtors in Possession*

**EXHIBIT A**

**Debtors' Bank Accounts**

National Bank of South Carolina Post Office Box 1798 Sumter, SC 29151  Harold L. Deprill, Jr., SVP (803) 775-1211	Operating Account	xxx98701
	Payroll Account	xxx00701
	Credit Card Control Account	xxx99501
Park Sterling Bank (CapitalBank) 1200 W. Wade Hampton Blvd Greer, SC 29650  Amanda Smith (864) 848-4000 ext 4502	Operating Account	xxx61434
	Payroll Account	xxx86713
	Credit Card Sweep Account	xxx86764
Bank of Travelers Rest 42 Plaza Drive Travelers Rest, SC 29690  Anne Jones (864) 834-9031	Petty Cash Account	xxx5062024



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

Case No. 12-01220

**ORDER AUTHORIZING (I) CONTINUED USE OF EXISTING CASH MANAGEMENT  
SYSTEM, (II) CONTINUED USE OF EXISTING BANK ACCOUNTS, (III)  
AUTHORIZING CONTINUED USE OF EXISTING BUSINESS FORMS, AND (IV)  
GRANTING A WAIVER OF INVESTMENT AND DEPOSIT REQUIREMENTS**

The relief set forth on the following pages, for a total of 8 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.*,<sup>1</sup> d/b/a The Cliffs Golf & Country Club,

Debtors.

CHAPTER 11

Case No. 12-01220

Joint Administration Pending

**ORDER AUTHORIZING (I) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (II) CONTINUED USE OF EXISTING BANK ACCOUNTS, (III) AUTHORIZING CONTINUED USE OF EXISTING BUSINESS FORMS, AND (IV) GRANTING A WAIVER OF INVESTMENT AND DEPOSIT REQUIREMENTS**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for an order, pursuant to sections 105 and 363 of the Bankruptcy Code, authorizing (i) the continued maintenance and use of the Debtors' existing cash management system, (ii) the continued maintenance and use of the Debtors' existing bank accounts, (iii) the continued use of existing business forms and checks; and (iv) a waiver of investment and deposit requirements and upon the Cherry Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtors' estates, their creditors, and other

<sup>1</sup> 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).

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

parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED.

**CONTINUED USE OF CASH MANAGEMENT SYSTEM**

2. The Debtors are authorized to continue using the Cash Management System to manage their cash in the ordinary course of business and to otherwise transfer funds consistent with their past practices.

3. The Debtors shall maintain records of all transfers within the Cash Management System so that all transfers and transactions shall be adequately and promptly documented in, and ascertainable from, the Debtors' books and records, to the same extent as maintained prior to the commencement of these Chapter 11 cases.

4. All banks at which the Debtors maintain bank accounts (the "Banks"), including, without limitation, those accounts listed on Exhibit A attached hereto (collectively with any and all other bank accounts maintained by the Debtors, the "Bank Accounts"), are authorized and directed to (a) continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced, and maintained prior to the Petition Date, without interruption and in the usual and ordinary course and (b) to pay any and all checks, drafts, wires, automated clearinghouse transfers, electronic fund transfers, or other items presented, issued, or drawn on the Bank Accounts (collectively, the "Debits") on account of a claim arising on or after the Petition Date so long as there are sufficient funds in the relevant Bank Accounts.

5. The Banks are restrained and prohibited from honoring any Debit presented, issued, or drawn on any Bank Account on account of a claim arising prior to the Petition Date (a "Prepetition Debit") unless the payment of such claim: (a) has been authorized by an order of

this Court, (b) has been directed by the Debtors and not otherwise prohibited by a “stop payment” request received by the relevant Bank from the Debtors, and (c) is supported by sufficient funds in the relevant Bank Account.

6. Subject to the provisions of this Order, the Banks are authorized and directed to rely on the representations of the Debtors as to which Debits are authorized to be honored or dishonored, whether or not such Debits are dated prior to, on, or subsequent to the Petition Date, and whether or not the Bank believes the payment are authorized by an order of the Court. To the extent that the Debtors direct that any Debit be dishonored, the Debtors may issue replacement Debits consistent with the orders of this Court.

7. Each Bank that maintains one or more Bank Accounts shall implement reasonable handling procedures to effectuate the terms of this Order. No Bank that implements such handling procedures shall be liable to the Debtors or their estates, or otherwise held in violation of this Order, for honoring a Prepetition Debit or other Debit (a) at the direction of the Debtors to honor such Prepetition Debit or other Debit, (b) in the good faith belief that the Court has authorized that such Prepetition Debit or other Debit be honored, or (c) as a result of an innocent mistake made despite implementation of such handling procedures.

8. The relief, rights, and responsibilities provided for in this Order shall be deemed to apply to any and all Bank Accounts maintained in the Debtors’ names, whether or not such Bank Accounts are listed on Exhibit A attached hereto.

#### **CONTINUED USE OF BANK ACCOUNTS**

9. The requirements of the U.S. Trustee Guidelines that the Debtors close all existing bank accounts and open new debtor-in-possession accounts are hereby waived. Further, the requirements of the U.S. Trustee Guidelines that the Debtors establish specific bank accounts for tax payments are hereby waived.

10. The Bank Accounts are deemed debtor-in-possession accounts, the Debtors are authorized, but not directed, to maintain and use the Bank Accounts in the same manner and with the same account numbers, styles and document forms as those employed prior to the Petition Date, including, without limitation: (a) to deposit funds in, and withdraw funds from, the Bank Accounts by all usual means, including checks, wire transfers, and other Debits, (b) to pay postpetition ordinary course bank fees in connection with the Bank Accounts, (c) to perform obligations under the documents and agreements governing the Bank Accounts, and (d) to treat the Bank Accounts for all purposes as accounts of the Debtors in their capacity as debtors in possession.

#### **CONTINUED USE OF BUSINESS FORMS AND CHECKS**

11. The Debtors are authorized to continue using all checks and other banking forms substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' status as debtors-in-possession.

#### **WAIVER OF INVESTMENT AND DEPOSIT REQUIREMENTS**

12. The Debtors are authorized to invest and deposit funds in accordance with the Debtors' established investment and deposit practices, guidelines and the Management Agreements, all in effect as of the commencement of these Chapter 11 cases (as described in the Motion).

#### **OTHER MATTERS**

13. The requirements of Bankruptcy Rule 6004(a) are waived.

14. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

15. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

16. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order

17. 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 Chapter 11 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:**

/s/ Däna Wilkinson

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-and-

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**EXHIBIT A**

**Debtors' Bank Accounts**

National Bank of South Carolina Post Office Box 1798 Sumter, SC 29151  Harold L. Deprill, Jr., SVP (803) 775-1211	Operating Account	xxx98701
	Payroll Account	xxx00701
	Credit Card Control Account	xxx99501
Park Sterling Bank (CapitalBank) 1200 W. Wade Hampton Blvd Greer, SC 29650  Amanda Smith (864) 848-4000 ext 4502	Operating Account	xxx61434
	Payroll Account	xxx86713
	Credit Card Sweep Account	xxx86764
Bank of Travelers Rest 42 Plaza Drive Travelers Rest, SC 29690  Anne Jones (864) 834-9031	Petty Cash Account	xxx5062024