

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

Jointly Administered

FIRST OMNIBUS MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER  
PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE AND RULES 6006  
AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE  
APPROVING THE REJECTION OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

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 move the Court (this “Motion”), for the entry of an order the Court for entry of an order pursuant to section 365(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and Rules 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) approving the rejection of certain executory contracts and unexpired leases. In support of the Motion, Debtors respectfully represent as follows:

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<sup>1</sup> 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); Cliffs Club & Hospitality Service Company, LLC (9665) (12-01237).

### **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 is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested by this Motion are sections 365(a) and 1107(a) of the Bankruptcy Code.

### **BACKGROUND**

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

4. On February 29, 2012, the Court entered an order designating the Debtors' Chapter 11 cases as complex Chapter 11 cases pursuant to Rule 2081-2 of the Local Rules for the United States Bankruptcy Court for the District of South Carolina [Docket Entry No. 51]. On March 5, 2012, the Court granted the Debtors' Motion to Jointly Administer these Chapter 11 cases [Docket Entry No. 89].

5. 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.

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

7. 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].

**RELIEF REQUESTED**

8. In accordance with section 365(a) of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014, the Debtors seek authorization to reject certain executory contracts and unexpired leases identified on Exhibit "A" attached hereto as provided in an order in the form attached hereto as Exhibit "B". Parties to the executory contracts and unexpired leases that the Debtors seek by this Motion authority to reject should locate their names and addresses and their contracts or leases in Exhibit "A," which lists them alphabetically as required by Bankruptcy Rule 6006(f).

9. The Debtors have determined in their business judgment that the rejection of certain executory contracts and unexpired leases would be in their best interests. The two (2) executory contracts and/or unexpired leases identified on Exhibit A attached hereto are an IT service agreement and a plant lease/maintenance agreement (the "Executory Contracts"). By this Motion, the Debtors seek to reject the Executory Contracts.

10. Because the Debtors have determined that continued compliance with the terms of the Executory Contracts would provide no corresponding benefit to the Debtors or the creditors in these Chapter 11 cases, it is in the best interest of Debtors and their creditors to reject the Executory Contracts pursuant to section 365(a) of the Bankruptcy Code. Rejection of the Executory Contracts will maximize the value of Debtors' operations and reduce operating losses associated therewith. As of the Petition Date, the Debtors continued to be obligated to make payments and render other performance under the Executory Contracts. By rejecting the Executory Contracts, the Debtors believe that they will be able to achieve cost savings over the

remaining terms of the Executory Contracts. Therefore, immediate rejection of the Executory Contracts will prevent the estates from potentially incurring unnecessary administrative expenses associated with the Debtors' obligations under the Executory Contracts.

### **BASIS FOR RELIEF REQUESTED**

11. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor. 11 U.S.C. §365(a); *see also NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1983) *aff'd*, 465 U.S. 513 (1984) (explaining that "the usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the business judgment test"); *Dunes Hotel Assoc. v. Hyatt Corp. (In re Dunes Hotel Assoc.)*, 194 B.R. 967, 988 (Bankr. D.S.C. 1995). "The authority to reject an executory contract is vital to the basic purpose of a Chapter 11 reorganization [ ] because rejection can release the debtor's estate from burdensome obligations that can impede a successful reorganization." *Three Sisters Partners, L.L.C. v. Harden (In re Shangri-La, Inc.)*, 167 F.3d 843, 849 (4th Cir. 1999). Section 1107(a) provides, with exceptions not applicable here, that a debtor in possession shall have the rights and powers of a trustee. "[T]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to renounce title to and abandon burdensome property." *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (internal quotation marks and reference omitted).

12. Courts defer to a debtor's business judgment in rejecting an executory contract or unexpired lease, and upon finding that a debtor has exercised its sound business judgment, approve a debtor's decision to reject under section 365(a) of the Bankruptcy Code.

*See Bildisco & Bildisco*, 465 U.S. at 523 (recognizing business judgment standard used to approve rejection of executory contracts). The decision to reject an executory contract or unexpired lease is primarily administrative and should be given great deference by a court, subject only to review under the “business judgment” rule. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distr. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *Host Mgmt., Inc. v. Palace Homeowner’s Assoc., Inc.*, No. 4:91-3132-21, 1992 WL 738797, at \*4 (D.S.C. July 14, 1992). The business judgment rule requires that the Debtors establish that rejection of the agreement will likely benefit the estate.

13. Debtors have determined that the Executory Contracts are not a source of potential value for their creditors and are not necessary for their reorganization under Chapter 11. Rejection of the Executory Contracts will relieve burdens relative to the Debtors’ restructuring efforts. Accordingly, the decision to reject the Executory Contracts is a proper exercise of the Debtors’ business judgment.

14. In light of the foregoing, the Debtors respectfully request that the Court approve the rejection of the Executory Contracts pursuant to section 365(a) of the Bankruptcy Code.

15. Section 365(g) of the Bankruptcy Code provides that the rejection of an executory contract constitutes a breach of the contract as of “immediately before the date of the filing of the [bankruptcy] petition.” 11 U.S.C. § 365(g)(1). Bankruptcy Rule 3002(c)(4) provides that a claim arising from the rejection of an executory contract or unexpired lease may be filed within such time as the court may direct. The allowance of claims for the rejection of an executory contract or unexpired lease is governed by section 502 of the Bankruptcy Code. To expedite the efficient administration of the Debtors’ estates, the Debtors respectfully request that

the Court set the bar date for parties affected by the rejections proposed herein to file a proof of claim for damages, if any, arising out of the rejection of the Executory Contracts as the same claims bar date this Court sets for other creditors in the above-styled Chapter 11 cases.

16. The Debtors reserve all rights, claims and defenses with respect to the allowance of any claim for damages arising out of the rejection of the Executory Contracts.

**NOTICE OF THIS MOTION**

17. No trustee or examiner has been appointed in these Chapter 11 cases. Notice of this Motion will be served pursuant to the Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket Entry No. 121] including each counterparty to the Executory Contracts. A copy of the Motion has been made available on the website of the Debtors' claims and noticing agent, BMC Group, Inc., at [www.bmcgroup.com/cliffs](http://www.bmcgroup.com/cliffs). The Debtors submit that, under the circumstances, no other or further notice is required.

**NO PRIOR REQUEST**

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

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto as **Exhibit B** and grant such other and further relief as the Court may deem just and proper.

Dated: March 30, 2012

Respectfully submitted,

/s/ Däna Wilkinson

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/s/ J. Michael Levengood

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**EXHIBIT A**

**LIST OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**



**EXECUTORY CONTRACTS / LEASES TO BE REJECTED**

<b>Number</b>	<b>Lease/ Executory Contract</b>	<b>Lessor/Counter Party Notice Address</b>	<b>Monthly Payment</b>
1	WebEx Service Agreement with The Cliffs	Cisco WebEx LLC 3979 Freedom Circle Santa Clara, CA 95054	approximately \$1,245.00
2	Plant Lease with Guaranteed Maintenance with The Cliffs at Glassy	Interior Landscapes, LLC 51 Plant Drive Ext. Greenville, SC 29607	\$189.00

**EXHIBIT B**

**PROPOSED ORDER**

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

Case No. 12-01220

**ORDER PURSUANT TO SECTION 365(A) OF THE BANKRUPTCY CODE AND  
RULES 6006 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE  
APPROVING THE REJECTION OF CERTAIN EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES**

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.,<sup>1</sup>  
d/b/a The Cliffs Golf & Country Club,**

**Debtors.**

**CHAPTER 11**

**Case No. 12-01220**

**Jointly Administered**

**ORDER PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE AND  
RULES 6006 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE  
APPROVING THE REJECTION OF CERTAIN EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES**

Upon the motion [Docket Entry No. \_\_\_\_] (the “Motion”)<sup>2</sup> of the debtors and debtors-in-possession in the above-captioned Chapter 11 cases (the “Debtors”), for entry of an order (this “Order”) pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their estates, and the Court finding that: (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and notice of this Motion having been due and sufficient under the

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

circumstances; and upon the record herein; and after due deliberation; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. Pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014, the Debtors' rejection of the executory contracts and leases identified on Exhibit "1" annexed hereto is approved.

2. If the Debtors have deposited funds with a landlord of a Lease identified on Exhibit "1" as a security deposit or other arrangement, such landlord may not set off or otherwise use such deposit without the prior authority of the Court or agreement of the parties.

3. The Debtors are authorized to take such actions as are necessary to implement and effectuate the terms of this Order.

4. The bar date for parties affected by the rejections authorized herein to file a proof of claim for damages, if any, arising from the rejection of the executory contracts and leases identified on Exhibit "1" shall be the same claims bar date this Court sets for other creditors in these Chapter 11 cases.

5. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

AND IT IS SO ORDERED.

**Prepared and presented by:**

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**EXHIBIT "1"**

**EXECUTORY CONTRACTS / LEASES TO BE REJECTED**

<b>Number</b>	<b>Lease/ Executory Contract</b>	<b>Lessor/Counter Party Notice Address</b>	<b>Monthly Payment</b>
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