

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

DEBTORS' MOTION FOR EMERGENCY HEARING ON MOTION FOR ENTRY OF ORDER AUTHORIZING THE PAYMENT OF PREPETITION TRUST FUND TAXES IN THE ORDINARY COURSE OF BUSINESS

PLEASE TAKE NOTICE THAT the undersigned, on behalf 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"), does hereby move before this Court for an order granting an emergency hearing on Motion for Entry of Order Authorizing the Payment of Prepetition Trust Fund Taxes in the Ordinary Course of Business (the "Motion"), filed contemporaneously herewith. In support of this request for an emergency hearing, and pursuant to SC LBR 9013-1(d), the Debtors state as follows:

Pursuant to the Motion, the Debtors seek entry of an order authorizing, but not directing, the Debtors to pay prepetition Trust Fund Taxes (as defined in the Motion) owed to the appropriate Taxing Authorities (as defined in the Motion) in the ordinary course of business, as

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).

such payments become due and payable and to the extent adequate funds are available to make such payments, and to the extent consistent with any orders entered by the Court in connection with the use of cash collateral and debtor-in-possession financing. As described in more detail in the Motion, pursuant to section 541(d) of the Bankruptcy Code, "property of the estate" is defined as: "Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d). Thus, courts have held that property held by the debtor in trust (either express or constructive) for another is not property of a debtor's estate. Many Taxing Authorities impose personal liability on the officers and directors of corporations to the extent such taxes are collected but not remitted. The Debtors' officers and directors may be subject to civil or even criminal liability as a result of such non-payment. The prosecution of such actions during the pendency of these cases would be a significant distraction, and therefore, be detrimental to the Debtors' reorganization efforts. The Debtors respectfully submit that their failure to immediately be authorized to pay prepetition Trust Fund Taxes owed to the appropriate Taxing Authorities in the ordinary course of business would result in immediate and irreparable harm to their estates. Thus, the Debtors respectfully request that the Motion be heard on an emergency basis, at the earliest possible time. Finally, counsel for the Debtors certifies that representatives of the Debtors have made substantial good faith efforts to resolve these matters with other parties in interest to the Motion, but such efforts have been unsuccessful.

WHEREFORE, the Debtors respectfully request that the Court enter an order granting their request for an emergency hearing on the Motion.

Dated: February 28, 2012

Respectfully submitted,

/s/ Däna Wilkinson

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