

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

**DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 363, AND 503(b)(1) OF THE  
BANKRUPTCY CODE FOR AUTHORIZATION TO HONOR PREPETITION  
OBLIGATIONS TO CUSTOMERS AND OTHERWISE CONTINUE CUSTOMER  
PROGRAMS 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"), pursuant to Sections 105(a), 363, and 503(b)(1) of Title 11 of the United States Code (the "Bankruptcy Code"), and hereby move the Court to enter an order authorizing the Debtors, in their discretion, to honor certain prepetition obligations to customers, and otherwise continue customer programs in the ordinary course of business. In support of this Motion, the Debtors respectfully show the Court as follows:

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<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).

### **JURISDICTION AND VENUE**

1. 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**

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

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

4. 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.

5. 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").

### **RELIEF REQUESTED**

6. Prior to the Petition Date, in the ordinary course of business, the Debtors engaged in certain activities to develop and sustain a positive reputation and relationship with its customers. To that end, the Debtors implemented various customer programs and policies (collectively, the "Customer Programs") designed to ensure customer satisfaction, meet competitive pressures, develop and sustain customer relationships and loyalty, improve profitability, and generate goodwill for the Debtors and their products and services.

7. By this Motion, pursuant to sections 105(a), 363(b), and 503(b)(1) of the Bankruptcy Code, the Debtors request authorization to continue their Customer Programs in the ordinary course of business and to perform and honor, at the Debtors' sole discretion, their prepetition obligations thereunder.

### **THE CUSTOMER PROGRAMS**

8. The Customer Programs are integral to the Debtors' efforts to stabilize their businesses, restore vitality, and ultimately deliver the most value to all stakeholders in the Debtors' Chapter 11 cases. The Debtors believe that they must promptly assure customers of their continued ability to satisfy prepetition and postpetition obligations under the Customer Programs to maintain their valuable customer base, and myriad other important benefits derived therefrom, following the commencement of these Chapter 11 cases. The Customer Programs that the Debtors seek the authority, but not the obligation, to honor in the ordinary course of the Debtors' businesses are summarized below, subject to terms of the budget attached to the orders relating to debtor in possession financing and use of cash collateral (the "DIP Budget").

9. The Debtors' books and records reflect approximately \$338,000 in outstanding gift cards redeemable for merchandise sold by the Debtors (and food and entertainment), for which the Debtors seek the authority, but not the obligation, to honor in the ordinary course of the Debtors' businesses.

10. The Debtors' books and records reflect approximately \$298,000 outstanding, in the aggregate, for: (i) prepaid golf passes redeemable for golf play at the Debtors' golf facilities (excluding ancillary charges such as golf cart rentals, range balls or other merchandise, goods or

services); (ii) event deposits for events scheduled to be conducted at the Debtors' facilities;<sup>2</sup> and (iii) credit books reflecting credits earned through tournament play or similar prizes redeemable for merchandise sold by the Debtors, for which the Debtors seek the authority, but not the obligation, to honor in the ordinary course of the Debtors' businesses.

**Ample Cause and Support Exists to Authorize  
the Debtors to Continue Their Customer Programs**

11. The Debtors believe that the continuation of the Customer Programs constitutes "ordinary course of business" practices, and, therefore, does not require court approval. However, out of an abundance of caution, the Debtors seek authorization, but not direction, pursuant to sections 105(a), 363, and 503(b)(1) of the Bankruptcy Code to continue, renew, replace, implement, modify, and/or terminate the Customer Programs as they deem appropriate, and to honor their undisputed prepetition obligations in respect thereof, in the ordinary course of business, without interruption, in accordance with prepetition practices.

12. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. 11 U.S.C. §§ 1107(a), 1108. Pursuant to section 503(b)(1) of the Bankruptcy Code, a debtor may incur, and the court, after notice and a hearing, shall allow as administrative expenses, among other things, "the actual, necessary costs and expenses of preserving the estate." *Id.* § 503(b)(1). In addition, pursuant to section 363(b) of the Bankruptcy Code, a debtor may, in the exercise of its sound business judgment and after notice and a hearing, use property of the estate outside of the ordinary course of business. *Id.* § 363(b).

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<sup>2</sup> For example, the Debtors are holding deposits in the total amount of \$140,550 with respect to over fifty (50) weddings and/or wedding receptions planned to be held at the Debtors' facilities following the Petition Date. The average deposit is approximately \$2,500, and represents approximately twenty percent (20%) of the anticipated revenue that the Debtors will receive from each event.

13. The Debtors believe the use of estate funds to continue the Customer Programs is a necessary cost of preserving the Debtors' estates. Honoring the Customer Programs will enable the Debtors to retain, maintain, and create valuable relationships which, in turn, will help strengthen the Debtors' businesses and prospects for a successful reorganization.

14. Furthermore, to supplement the explicit powers described above, section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *Id.* § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). "Under 11 U.S.C. § 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177). The Debtors strongly believe that the honoring of prepetition obligations under the Customer Programs, and the continuation thereof, is imperative to the ongoing operations and viability of the Debtors.

15. The "doctrine of necessity" functions in a Chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of the debtor); *Ionosphere Clubs*, 98 B.R. at 176 (authorizing the payment of prepetition claims while noting that "judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the

debtor.”). The rationale for the “doctrine of necessity” is consistent with the paramount goal of Chapter 11 - “facilitating the continued operation and rehabilitation of the debtor ....” *Ionosphere Clubs*, 98 B.R. at 176.

16. The prepetition obligations owed by the Debtors to their customers further qualify for postpetition payment because if the Debtors do not honor their obligations, the Debtors’ goodwill and going concern value will be severely and irreparably harmed.

17. The continuity, viability, and revitalization of the Debtors’ businesses are dependent on the development and maintenance of the loyalty of their customers. Customers are the keystone to the Debtors’ businesses and success. It is essential to the Debtors’ businesses that the Debtors be permitted to continue the Customer Programs and honor the prepetition obligations relating to deposits thereunder. If the Debtors are unable to do so, their operations, and corresponding prospects for a successful reorganization, will be immediately and irreparably harmed.

18. Further, if the Debtors were not permitted to honor their Customers Programs pursuant to the terms of the respective contracts or customary practice, it would have a deleterious effect on the Debtors’ relationships to existing clients and the prospect of obtaining future customers. Present customers would not likely continue to do business with the Debtors, future customers would also be less likely to enter into contractual relationships with the Debtors, fearful that the Debtors may ultimately fail to honor these Customer Programs. Therefore, there is a serious need for the Debtors to be permitted to honor the prepetition Customer Programs in order to maintain their existing client base and preserve their goodwill on a going-forward basis.

19. The Debtors’ ability to continue the Customer Programs, which have proven beneficial, is necessary to reassure customers of the ongoing viability of the Debtors, preserve

goodwill, and maintain critical business relationships. The Debtors submit that the resulting benefit of continued customer satisfaction during the pendency of these Chapter 11 cases will far exceed the cost of such Customer Programs. Further, the Debtors expect to have sufficient resources available to maintain their Customer Programs, to the extent described herein. Considering the potential for loss of competitiveness, goodwill, and relationships, absent the relief requested herein, and the resulting negative impact on the Debtors' businesses and reorganization efforts, the Debtors submit that the request for authorization to continue the Customer Programs in the ordinary course of business and to perform and honor the prepetition obligations thereunder, as the Debtors deem appropriate in their sole business judgment, without further application to the Court, is in the best interest of the Debtors, their estates, and their creditors, and should be approved in all respects.

**Request for Authority for Banks to Honor and Pay Checks  
Issued and Electronic Funds Transferred on Account of Customer Programs**

20. The Debtors further request that the Court authorize and direct all applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn or electronic funds transferred to pay the Customer Programs, whether such checks were presented prior to or after the Petition Date; provided, however, that such checks or electronic transfers are identified by the Debtors as relating directly to the authorized payment of the Customer Program claims. The Debtors also seek authority to issue new post-petition checks, or effect new electronic fund transfers, on account of such claims to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 cases.

**THE REQUESTED RELIEF SATISFIES BANKRUPTCY RULE 6003**

21. The Debtors submit the facts cited herein and in the Cherry Declaration, filed contemporaneously herewith, illustrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Based on the foregoing, the Debtors respectfully submit that Bankruptcy Rule 6003 has been satisfied.

**WAIVER OF BANKRUPTCY RULES 6004(A) AND (H)**

22. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**RESERVATION OF RIGHTS**

23. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party in interest's rights to dispute any claim, or (iii) an approval or assumption of any agreement, contract, program, policy or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently. Finally, the relief requested herein shall not oblige the Debtors to accept any services, to accept the shipment of goods, or prevent the Debtors from returning or rejecting goods.

**NOTICE**

24. 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 the Court grant the relief requested herein and such other and further relief as it deems just and proper.

*[signature follows]*

Dated: February 28, 2012

Respectfully submitted,

/s/ Däna Wilkinson

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

Case No. 12-01220

**ORDER AUTHORIZING THE DEBTORS TO HONOR PREPETITION OBLIGATIONS  
TO CUSTOMERS AND OTHERWISE CONTINUE CUSTOMER PROGRAMS 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.,<sup>1</sup> d/b/a The Cliffs Golf & Country Club,**

**Debtors.**

**CHAPTER 11**

**Case No. 12-01220**

**Joint Administration Pending**

**ORDER AUTHORIZING THE DEBTORS TO HONOR PREPETITION OBLIGATIONS  
TO CUSTOMERS AND OTHERWISE CONTINUE CUSTOMER PROGRAMS IN THE  
ORDINARY COURSE OF BUSINESS**

Upon the motion [Docket Entry No. \_\_\_\_] (the "Motion")<sup>2</sup> of the Debtors for an order authorizing the Debtors, in their discretion, to honor certain prepetition obligations to customers, and otherwise continue customer programs in the ordinary course of business, 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 parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor, it is hereby

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<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.

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

1. The Motion is GRANTED.
2. The Debtors, in their business judgment, are authorized, but not directed, to honor prepetition obligations relating to the Customer Programs, as they deem appropriate, in the ordinary course of business, in the same manner and on the same basis as the Debtors honored such obligations prior to commencement of these Chapter 11 cases, subject to terms of the DIP Budget; provided, however, that the relief granted herein shall not constitute an approval, assumption, or rejection of any Customer Program or related agreement or policy pursuant to section 365 of the Bankruptcy Code.
3. Specifically, the Debtors are authorized, but not directed, to honor:
  - (a) gift cards redeemable for merchandise sold by the Debtors (and food and entertainment);
  - (b) prepaid golf passes redeemable for golf play at the Debtors' golf facilities (excluding ancillary charges such as golf cart rentals, range balls or other merchandise, goods or services);
  - (c) event deposits for events scheduled to be conducted at the Debtors' facilities; and
  - (d) credit books reflecting credits earned through tournament play or similar prizes redeemable for merchandise sold by the Debtors.
4. Unless otherwise specifically set forth above in this Order or subsequently ordered by this Court, the Debtors, including any and all employees, associates and agents of the Debtors, **shall not** be authorized to honor any club credits or dues credits of any kind held by any person or entity.
5. The Debtors, in their business judgment, are authorized, but not directed, to continue, renew, replace, implement, modify, and/or terminate the Customer Programs approved

hereby, as they deem appropriate, in the ordinary course of business and without further application to the Court.

6. Nothing herein shall be construed to limit, or in any way affect, the Debtors' ability to dispute any claim by a customer with respect to any Customer Program.

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

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

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

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

11. 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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