

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

Jointly Administered

**DEBTORS' MOTION FOR AN ORDER EXTENDING
THE TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY
PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE**

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 file this motion requesting entry of an order extending the time period by which they must decide to assume or reject unexpired leases of nonresidential real property (the "Motion"), and for this Motion state as follows:

¹ 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 (7576) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC (6559) (12-01234); The Cliffs Valley Golf & Country Club, LLC (6486) (12-01236); and Cliffs Club & Hospitality Service Company, LLC (9665) (12-01237).

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

3. 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.

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

5. 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].

REQUESTED RELIEF

6. By this Motion, the Debtors request entry of an order, substantially in the form attached hereto as Exhibit B, pursuant to Section 365(d)(4)(B) of the Bankruptcy Code, granting a ninety (90) day extension of the time period by which the Debtors must decide to assume or reject all nonresidential real property leases to which any one of the Debtors is a lessee and which have not yet been rejected, terminated, or assigned, or otherwise expired as of the date of this Motion (collectively, the "Unexpired Leases"), specifically including the Unexpired Leases

identified in Exhibit A attached hereto,² without prejudice to the Debtors' rights to seek and obtain further extensions of the time period to assume or reject the Unexpired Leases with the consent of any affected lessor, as contemplated in Section 365(d)(4)(B)(ii) of the Bankruptcy Code.

BASIS FOR RELIEF REQUESTED

7. In a Chapter 11 case, a debtor must assume or reject unexpired nonresidential real property leases to which it is a lessee within one hundred and twenty (120) days of the commencement of its bankruptcy case, or within two hundred ten (210) days of the commencement of its bankruptcy case if the court permits such extension for "cause," otherwise such leases shall be deemed rejected. 11 U.S.C. § 365(d)(4).

8. The term "cause" as used in Section 365(d)(4)(B) is not defined in the Bankruptcy Code, nor does the Bankruptcy Code establish formal criteria for evaluating a request for an extension of the initial 120-day period in which a debtor must decide to assume or reject unexpired nonresidential real property leases. Bankruptcy courts generally have held that the decision to extend this time period is left to the sound discretion of the Bankruptcy Court, and have considered the following non-exhaustive list of factors:

- (1) whether the lease is the primary asset of the debtor,
- (2) whether the debtor has had time to intelligently appraise its financial situation and the potential value of its assets in terms of the formulation of a plan,
- (3) whether the lessor continues to receive the rent required in the lease,

² The Debtors reserve all rights to dispute any claims or obligations with respect to the Unexpired Leases identified in Exhibit A, the inclusion of which does not indicate that the Debtors stipulate or agree to the validity of any such lease or any obligations thereunder. The exclusion of any Unexpired Lease from Exhibit A does not indicate that the Debtors release any counterparty from any obligations under such Unexpired Lease, and does not indicate whether the Debtors intend to assume or reject any such Unexpired Lease.

- (4) whether the debtor's continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code,
- (5) whether the lessor has a reversionary interest in the building built by the debtor on the landlord's land,
- (6) the number of leases the debtor must evaluate,
- (7) whether the need exists for a judicial determination of whether the lease is disguised as a security interest,
- (8) whether the debtor has failed or is unable to formulate a plan when it has had more than enough time to do so, and
- (9) any other factors bearing on whether the debtor has had a reasonable amount of time in which to decide whether to assume or reject the lease.

See, e.g., In re Service Merchandise Co., Inc., 256 B.R. 744 (Bankr. M.D. Tenn. 2000); *In re Victoria Station, Inc.*, 88 B.R. 231 (9th Cir. BAP 1988), *aff'd*, 875 F.2d 1380 (9th Cir.1989); *South Street Seaport L.P. v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 760-61 (2d Cir. 1996) (citing *Theatre Holding Corp. v. Mauro*, 681 F.2d 102, 105-06 (2d Cir. 1982)); *In re Clear Channel Home Ctrs., Inc.*, 989 F.2d 682, 689 (3d Cir. 1993). This list is not exclusive, and a great deal of discretion is left to the court to weigh all relevant factors related to the requested extension. *In re Ernst Home Center, Inc.*, 221 B.R. 243 (9th Cir. BAP 1998).

9. Cause exists to extend the deadline for the Debtors to decide whether to assume or reject unexpired nonresidential real property leases. These are large and complex bankruptcy cases. As set forth in the Debtors' schedules and statement of financial affairs, as well as in the record in these cases, the Debtors have assets and liabilities well in excess of \$100 million, and the Debtors have obtained \$7.5 million in debtor-in-possession financing to operate their substantial business operations involving numerous contractual relationships with creditors and parties in interest. At this early stage of the Debtors' bankruptcy cases, the Debtors are continuing to review their books and records to determine how many Unexpired Leases exist

under which any of the Debtors is a lessee, in addition to those Unexpired Leases identified in Exhibit A hereto.

10. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, as well as the relief granted by the Court to date pursuant to the Debtors' "First Day" motions, the Debtors continue to operate as debtors in possession of their assets. The Debtors' primary focus now is to formulate a Chapter 11 plan and obtain requisite acceptances thereof by creditors in these cases. The Debtors respectfully submit that they have not yet had time to fully appraise their financial situation and the potential value of their assets in terms of the formulation of a plan, and require additional time to assess and evaluate whether to assume or reject any Unexpired Leases as part of the Debtors' overall objective of reorganization.

11. In the regular course of their post-petition operations, the Debtors are paying their administrative obligations as they become due and owing; therefore, to the extent any of the Debtors are a lessee under any Unexpired Leases, they are timely paying all rent obligations due thereunder. Accordingly, the Debtors' continued occupation of any land associated with Unexpired Leases will not damage any lessor.

12. In sum, for the foregoing reasons, and particularly considering that the Debtors are at such an early stage of their bankruptcy cases, the circumstances warrant the requested extension of the time-period in which the Debtors must decide to assume or reject Unexpired Leases by ninety (90) days.

NOTICE

13. 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], and specifically upon the counterparty

lessors identified in Exhibit A attached hereto. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PREVIOUS REQUEST

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

WHEREFORE, for all of the foregoing reasons, the Debtors respectfully request an order (i) extending the time-period in which the Debtors may file a motion or motions to assume or reject any of their Unexpired Leases by ninety (90) days beyond the initial one hundred twenty (120) day election period, to September 25, 2012, which date is two hundred ten (210) days after the Petition Date; and (ii) granting the Debtors such other and further relief as is just and proper.

[signature follows]

Dated: April 26, 2012

Respectfully submitted,

/s/ Däna Wilkinson

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Attorneys for the Debtors and Debtors in Possession

EXHIBIT A

IDENTIFIED UNEXPIRED LEASES¹

<u>Debtor Lessee</u>	<u>Counterparty Lessor</u>	<u>Agreement</u>
The Cliffs at Glassy Golf & Country Club, LLC	The Cliffs at Glassy, Inc. 3598 Highway 11 Travelers Rest, SC 29690	The Glassy Chapel Lease dated April 30, 2010
The Cliffs at Keowee Springs Golf & Country Club, LLC	Waterfall Investment Group, LLC 3598 Highway 11 Travelers Rest, SC 29690	99-year Ground Lease dated December 31, 2007
The Cliffs at Keowee Falls Golf & Country Club, LLC	McCloskey, LLC 711 Timerbrook Trail Salem, SC 29676	Commercial Lease Agreement dated March 29, 2012
The Cliffs at Walnut Cove Golf & Country Club, LLC	Waterfall Investment Group, LLC 3598 Highway 11 Travelers Rest, SC 29690	99-year Ground Lease dated December 31, 2007
The Cliffs at Walnut Cove Golf & Country Club, LLC	The Cliffs at Walnut Cove, LLC 3598 Highway 11 Travelers Rest, SC 29690	99-year Nature Center Lease dated June 3, 2010
Cliffs Club & Hospitality Service Company, LLC	The Cliffs Commercial Properties, LLC 3598 Highway 11 Travelers Rest, SC 29690	Commercial Lease Agreement dated March 1, 2012

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EXHIBIT B

PROPOSED ORDER

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

Jointly Administered

**ORDER GRANTING DEBTORS' MOTION FOR AN ORDER EXTENDING
THE TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY
PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE**

This matter came on for hearing on May 8, 2012 at 9:00 a.m. (Eastern) (the "Hearing") on the motion [Docket Entry No. _____] (the "Motion")² filed by 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") for an order extending the time-period by ninety (90) days by which the Debtors must decide to assume or reject unexpired nonresidential real property leases under which any of the Debtors is a lessee (the "Unexpired Leases"), specifically including the Unexpired Leases identified in Exhibit A attached to the

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

Motion, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and due notice of the Motion having been given; and it appearing that no other or further notice need be provided; and the Court having determined that cause exists to extend the time-period by which the Debtors must decide to assume or reject the Unexpired Leases pursuant to 11 U.S.C. § 365(d)(4)(B) and that the relief sought in the Motion is in the best interests of the Debtors, the Debtors' bankruptcy estates, and all creditors and other parties in interest; and having considered the record; and after due deliberation; and good cause existing to grant the relief requested in the Motion,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to 11 U.S.C. § 365(d)(4)(B), the Debtors' time to file a motion or motions to assume or reject any of their Unexpired Leases is hereby extended by ninety (90) days through and including September 25, 2012.
3. This Order shall be without prejudice to the Debtors' rights to request further extensions of the time to assume or reject any of their Unexpired Leases upon the consent of affected lessors, as contemplated by Section 365(d)(4)(B)(ii) of the Bankruptcy Code.
4. This Court shall retain jurisdiction over all matters arising out of or related to the Motion and this Order.

AND IT IS SO ORDERED.

Prepared and presented by:

/s/ Däna Wilkinson

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