

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 FOR ENTRY OF INTERIM AND FINAL ORDERS PURSUANT  
TO 11 U.S.C. §§ 105, 361, 362, 363, 364 AND 507(B) (I) APPROVING POST-PETITION  
FINANCING, (II) GRANTING LIENS AND PROVIDING SUPERPRIORITY  
ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE  
PROTECTION, (IV) MODIFYING THE AUTOMATIC STAY,  
AND (V) SCHEDULING A FINAL HEARING**

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 (this "Motion") pursuant to sections 105, 361, 362, 363(c), 363(d), 363(e), 364(c), 364(d)(1), 364(e) and 507(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the "Bankruptcy Code") and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the entry of the proposed interim order (the "Interim Order"), substantially in the form attached hereto as Exhibit B, and the proposed final order (the "Final Order" and, together with the Interim Order, the "DIP Orders"), (I) authorizing the Debtors to (A) obtain post-petition financing (the "DIP Facility") consisting

<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).

of a super priority non-amortizing revolving credit facility (the “DIP Revolving Loans”) in an aggregate principal amount not to exceed \$7.5 million (the “DIP Revolving Commitment”), of which up to \$3 million shall be available upon entry of the Interim Order (the “DIP Revolving Interim Commitment”), subject to the terms and conditions of the DIP Loan Documents (as defined below) with Carlile Development Company, LLC (“Carlile Development”; in its capacity as lender under the DIP Loan Documents, the “DIP Lender”), pursuant to the terms of the Interim Order and that certain Debtor in Possession Loan and Security Agreement by and among the Debtors and the DIP Lender (as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof, the “DIP Credit Agreement,” and together with any related documents and instruments delivered pursuant to or in connection therewith (including the “DIP Facility Documents”<sup>2</sup> referenced therein), the “DIP Loan Documents”), which DIP Credit Agreement is attached hereto as Exhibit A; (II) scheduling of a final hearing (the “Final Hearing”) on the Motion no later than March 23, 2012 to consider entry of a Final Order authorizing the borrowings under the DIP Loan Documents on a final basis and approve the form of notice procedures with respect thereto; and (III) granting related relief, including the modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors and the DIP Lender to implement the terms of the Interim Order and Final Order.

In support of this Motion, the Debtors rely upon, and incorporate by reference herein, the Declaration of Timothy P. Cherry in Support of First Day Motions (the “Cherry Declaration”), filed concurrently herewith. In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

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<sup>2</sup> As defined in the DIP Credit Agreement.

**BANKRUPTCY RULE 4001 CONCISE STATEMENT**<sup>3</sup>

1. Pending the Final Hearing, the financing and other related relief will be implemented on an interim basis pursuant to the terms of the proposed Interim Order and the DIP Credit Agreement governing the terms and conditions of the DIP Facility.

2. Material provisions of the DIP Facility are set out in the following sections of the DIP Credit Agreement and/or the proposed Interim Order:<sup>4</sup>

- (a) Borrowers. The Cliffs Club & Hospitality Group, Inc.; CCHG Holdings, Inc.; The Cliffs at Mountain Park Golf & Country Club, LLC; The Cliffs at Keowee Vineyards Golf & Country Club, LLC; The Cliffs at Walnut Cove Golf & Country Club, LLC; The Cliffs at Keowee Falls Golf & Country Club, LLC; The Cliffs at Keowee Springs Golf & Country Club, LLC; The Cliffs at High Carolina Golf & Country Club, LLC; The Cliffs at Glassy Golf & Country Club, LLC; The Cliffs Valley Golf & Country Club, LLC; and Cliffs Club & Hospitality Service Company, LLC (collectively, the "Borrowers"). DIP Credit Agreement, preamble; Interim Order ¶ A.
- (b) Borrowings. A DIP revolving credit facility (the "DIP Facility"), whereby funds may be advanced and made available to Borrowers in the aggregate maximum principal amount of \$7.5 million (the "DIP Commitment"). The term "Advance," in the singular, shall refer to any single advance made under the DIP Facility, and in the plural shall refer to more than one such advance. The DIP Facility shall be secured by a first priority lien on substantially all assets of the Debtors, pursuant to 11 U.S.C. §§ 364(c)(2) and (d)(1), and by a junior lien on assets which are subject to certain permitted prepetition liens (as set forth in the DIP Credit Agreement) pursuant to 11 U.S.C. § 364(c)(3) (collectively, the security interests, liens and assignments security the obligations owed to the DIP Lender under the DIP Facility, the "DIP Liens"), and which indebtedness to the DIP Lender shall have superpriority administrative status under 11 U.S.C. § 364(c)(1); provided, however, that the DIP

<sup>3</sup> All capitalized terms used herein but not otherwise defined, shall have the meanings ascribed to them in the DIP Credit Agreement or the Interim Order, as applicable.

<sup>4</sup> The summaries and descriptions of the terms and conditions of the DIP Credit Agreement and Interim Order set forth in this Motion are intended solely for informational purposes to provide the Court and parties in interest with an overview of the significant terms thereof and should only be relied upon as such. The summaries and descriptions are qualified in their entirety by the DIP Credit Agreement and the Interim Order. In the event there is a conflict between this Motion and the DIP Credit Agreement or the Interim Order, the DIP Credit Agreement or the Interim Order, as applicable, shall control in all respects.

Liens and the superpriority status of the DIP Facility indebtedness shall be subject only to (x) mechanic's and materialman's liens and other Liens, (y) a Carve Out as described in the DIP Credit Agreement, and (z) by operation of law, the Liens of anyone not given proper notice of the DIP Loan Motion and its hearings. DIP Credit Agreement, §3; and Interim Order ¶¶ 26 – 28.

An amount of approximately \$3.0 million (the "Interim Advances"), authorized by the Bankruptcy Court in the Interim Order, shall be made available on and after the date of entry of the Interim Order, and the balance of the DIP Commitment shall be available after entry of the Final Order (the Final Order together with the Interim Order, the "DIP Orders") by the Bankruptcy Court approving the DIP Facility. DIP Credit Agreement, § 2.1, 5.1, 5.2; Interim Order ¶ B.

- (c) DIP Lender. Carlile Development Company, LLC. DIP Credit Agreement, preamble; Interim Order ¶ A.
- (d) Operating Budget. The operating budget, subject to the approval of DIP Lender, shall consist of Borrowers' estimated projected cash flow position on a rolling 13- week basis (the "DIP Budget"), commencing as of the Closing Date (as defined below). A copy of the initial DIP Budget is attached hereto as Exhibit C. An updated DIP Budget shall be provided to DIP Lender and the Indenture Trustee within seven (7) days following the conclusion of the first four weeks of each DIP Budget. Upon approval of DIP Lender and the Indenture Trustee of each DIP Budget, any subsequent material changes to the DIP Budget may be made only on approval of DIP Lender and the Indenture Trustee. Borrowers will be allowed a 7.5% variance (exclusive of professional fees, for which no variance may be permitted) on the expense line items set forth in the DIP Budget, measured on a weekly basis, provided, however, that the aggregate amount of expenditures does not exceed the aggregate DIP Budget on a monthly basis plus a variance of 5%, exclusive of professional fees on which no variance may be permitted. The Borrowers shall be permitted to carry forward professional fee amounts not spent in the relevant budgeted period to future periods. The DIP Budget shall include no monthly reimbursement of fees and expenses of the DIP Lender or its Professionals except as set forth in paragraph 2(1) of this Motion, but shall include the adequate protection payments to Wells Fargo Bank, National Association, the Indenture Trustee and Collateral Trustee under agreements executed by the Borrowers in connection with Series A Notes Due 2017 and Series B Notes Due 2017, and dated as of April 30, 2010 (the "Indenture Trustee") in either case that accrue after the Petition Date. DIP Credit Agreement, § 4.2, 4.3; Interim Order ¶ 17, 22.
- (e) Additional Debt and Liens. The Interim Order and the Final Order shall contain provisions prohibiting Borrowers from incurring any indebtedness which (x) ranks *pari passu* with or senior to the Advances or (y) benefits from a first priority lien under section 364 of the Bankruptcy Code. DIP Credit Agreement, § 8.1, 8.2, 9.1(f), 9.1(g); Interim Order ¶ 30.

- (f) Mandatory Prepayments. Mandatory prepayments in connection with section 363 sales, receipt of insurance proceeds or receipt of condemnation proceeds as a result of governmental entity taking shall be used to prepay outstanding amounts under the DIP Facility.

Mandatory prepayments shall be applied, first to the payment of any All Inclusive Fee then due and payable to DIP Lender; second, to the payment of any accrued and unpaid interest due and payable on the Advances; and third, to the repayment of principal of the Advances, in each case until repaid in full.

DIP Credit Agreement, § 2.7; Interim Order ¶ N/A.

- (g) Interest Rate and Default Rate. Interest shall be payable monthly in arrears in cash on the outstanding amount of the Advances on the first business day of each month at a rate equal to 12.0% per annum.

The default rate will be 14% per annum.

DIP Credit Agreement, § 2.4; Interim Order ¶ B.

- (h) Maturity. Borrowers shall repay the DIP Obligations and the Prepetition Bridge Loan (as defined below) in full on the Maturity Date, to be defined as the earliest of (i) six (6) months after the Closing Date (as defined below); (ii) the date of acceleration of repayment of any outstanding Advances under the DIP Facility; (iii) the first business day on which the Interim Order expires by its terms or is terminated, unless the Final Order shall have been entered and become effective prior thereto; (iv) conversion of a Borrower's Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code ("Chapter 7") unless otherwise consented to in writing by DIP Lender; (v) dismissal of a Borrower's Chapter 11 Case unless otherwise consented to in writing by DIP Lender; (vi) the end of any Borrower's exclusivity under Bankruptcy Code § 1121(b); and (vii) the effective date of Borrowers' plan of reorganization confirmed in the Chapter 11 Case. Borrowers have the option to extend the Maturity Date as defined in clause (i) only for a period of six months if no event of default under the DIP Facility exists. DIP Credit Agreement, § 2.6; Interim Order ¶ N/A.

- (i) Events of Default. See DIP Credit Agreement, § 9.1.

- (j) Liens. See DIP Credit Agreement, § 8.2; Interim Order ¶ C.

- (k) Adequate Protection. The Indenture Trustee shall be provided adequate protection as described in the Interim Order and in a separate interim order on the use of cash collateral securing the Indenture Trustee (the "Interim Cash Collateral Order").

DIP Credit Agreement, § 4.3; Interim Order ¶ E.

- (l) Fees. The Borrowers will pay the following fees on account of the DIP Facility:

- Facility Fee. A fee of 2.0% of the DIP Commitment payable to DIP Lender upon the Maturity Date shall be paid as a Facility Fee, plus the "Prepetition All Inclusive Fee" and the "Post-Petition All Inclusive Fee," both as defined below.
- The DIP Lender shall receive the amount of \$242,000 as a "Prepetition All Inclusive Fee", fifty percent of which shall be paid on the Closing Date and fifty percent of which shall be paid on the Maturity Date. The DIP Lender shall also receive monthly in arrears the sum of \$50,000 (the "Post-Petition All Inclusive Fee"). The Post-Petition All Inclusive Fee shall accrue for the period beginning on the Petition Date and ending at payment in full of the DIP Obligations, and may be prorated for a partial month.
- The Pre-petition All Inclusive Fee and the Post-Petition All Inclusive Fee (collectively, the "All Inclusive Fees") are in lieu of any other reimbursement to the DIP Lender for professional or other fees or expenses incurred in regard to the DIP Facility. The All Inclusive Fees shall remain fixed without regard to the actual amount of any fees or expenses that might have been reimbursed to the DIP Lender in the absence of the All Inclusive Fees.

DIP Credit Agreement, § 4.3(b); Interim Order ¶ N/A.

3. In addition, the provisions described in Bankruptcy Rule 4001(c)(1)(B)(i)-(xi) are set out at the following sections of the DIP Credit Agreement and the Interim Order:

- (a) ***Grant of Priority or a Lien on Property of the Estate.*** DIP Credit Agreement, § 2.3, 3.1, 3.2, 6.9; Interim Order ¶¶ C, 26-30.
- (b) ***Adequate Protection or Priority for a Claim that Arose Before the Commencement of the Case.*** DIP Credit Agreement, § 4.3(a); Interim Order ¶ E.
- (c) ***Determination of the Validity, Enforceability, Priority, or Amount of a Claim that Arose Before the Commencement of the Case.*** DIP Credit Agreement, § 9.1(k); Interim Order ¶ 12.
- (d) ***Waiver or Modification of the Automatic Stay.*** DIP Credit Agreement, §§ 5.3(l), 9.2(e); Interim Order ¶¶ 37, 39.
- (e) ***Waiver or Modification of Authority to File a Plan, Seek an Extension of Time in which the Debtors have the Exclusive Right to File a Plan, Requests Use of Cash Collateral, or Requests Authority to Obtain Credit.*** DIP Credit Agreement, §§ 8.16, 8.1, 8.2, 9.1(a), 9.1(f), and 9.1(g); Interim Order ¶ 30.

- (f) ***Establishment of Deadlines for Filing a Plan, for Approval of a Disclosure Statement, for a Hearing on Confirmation, or for Entry of a Confirmation Order.*** DIP Credit Agreement, § 9.1(u).
- (g) ***Waiver or Modification of Applicability of Non Bankruptcy Law Relating to the Perfection of a Lien on Property of the Estate, or on the Foreclosure or Other Enforcement of the Lien.*** DIP Credit Agreement, § 3.3(e); Interim Order ¶¶ 26, 35.
- (h) ***Release, Waiver, or Limitation on any Claim or Cause of Action Belonging to the Estate.*** DIP Credit Agreement, §§ 3.4(a), 3.4(f), 5.3(1)(c), 10.12(d), 10.14(b), 10.16; Interim Order ¶ 12(d) - (f).
- (i) ***Indemnification of Any Entity.*** DIP Credit Agreement, § 3.6(b), 3.6(c), 10.3; Interim Order ¶ N/A.
- (j) ***Release, Waiver or Limitation on Rights under Section 506(c).*** DIP Credit Agreement, § 9.1(m); Interim Order ¶ N/A (reserved for Final Order).
- (k) ***Liens Granted on Claims Arising Under Chapter 5.*** DIP Credit Agreement, § 3.1 (such liens are expressly excluded); Interim Order ¶ C (such liens are excluded).

4. **Disclosures Under SC LBR 4001-4.** It must be noted that the DIP Agreement includes provisions which, under SC LBR 4001-4, are deemed not normally allowed, and which require disclosure. The Debtors and the DIP Lender are informed and believe that the provisions falling into this category are, according to their specific terms, appropriate and justified in this case. The provisions are as follows (the capital letters below correspond to the subparagraphs of SC LBR 4001-4(b)(1)):

(A) The Debtors' stipulations constitute admissions against interest of the Debtors as debtors and debtors in possession, and do not immediately bind anyone else, for example, the United States Trustee, a Committee, a trustee or examiner, or any creditor in any of the Debtors' Cases. Any party with standing other than the Debtors may commence an appropriate adversary proceeding or contested matter objecting to anything contained in the stipulations no later than seventy (70) days after the Petition Date. If no such adversary proceeding or contested matter is timely filed, then the following will occur without further notice, opportunity to be heard, or order of the Bankruptcy Court:

(i) the Debtors' stipulations will be deemed true and binding upon any and all parties in interest, including without limitation any committee or any representative of the estate appointed now or in the future in any of the Debtors' Cases in chapter 11 or in chapter 7 (collectively, "Bound Parties");

(ii) the Trust Indenture Liens will be deemed legal, valid, binding, enforceable, perfected, non-avoidable, and not subject to attack by any Bound Parties;

(iii) the Prepetition Bridge Loan and all other Trust Indenture Obligations shall be conclusive and binding upon all Bound Parties as legal, valid, binding, enforceable claims that are not subject to offset, counterclaim, equitable subordination, recharacterization, or other defense or claim; and

(iv) the Indenture Trustee, SP 50, the Carliles, the DIP Lender, and all their officers, agents, employees, affiliates, and assigns, will be deemed to be released from any claims or other liability whatsoever arising from or related to the Trust Indenture, the Trust Indenture Liens, the Prepetition Bridge Loan, or any other Trust Indenture Obligations.

(B) The DIP Agreement and Interim DIP Order provide that the DIP Loan is secured by a first priority lien on substantially all assets of the Debtors pursuant to 11 U.S.C. §§ 364(c)(2) and (d)(1), and by a junior lien on assets that are subject to certain permitted prepetition liens (as set forth in the Interim DIP Order) pursuant to 11 U.S.C. § 364(c)(3), and which indebtedness to the DIP Lender shall have superpriority administrative priority status under 11 U.S.C. § 364(c)(1).

(D) Agreement Section 8.16, reproduced in the footnote below,<sup>5</sup> contains a negative covenant that divests the Debtors, as debtors-in-possession, of some discretion in formulating a chapter 11 plan. The Carliles explain that provision as

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<sup>5</sup> "8.16. **Contents of a Reorganization Plan.**

(a) Proscription. No Borrower shall file, otherwise propose, or consent, to any Reorganization Plan in which DIP Lender or an affiliate is not a Reorganization Plan proponent, unless, before that act of filing, proposing, or consenting, either (i) DIP Lender has given its express written consent to that act, (ii) DIP Lender or Carlile Development Group has withdrawn as a Reorganization Plan proponent, or (iii) the Bankruptcy Court has approved 'Substitution Conditions,' defined in Paragraph 8.16(b) below, in full in a final order no longer subject to appeal.

A-1. (b) Definition. 'Substitution Conditions' means payment in full of the following, no later than Plan closing: (i) all outstanding obligations of the Prepetition Bridge Loan; (ii) all outstanding obligations of the DIP Facility; and (iii) to the extent earned (as described in the motion to approve bid procedures filed by one or more Borrowers on the Petition Date), a \$1,000,000 break-up fee, plus a \$750,000 expense reimbursement which shall increase by an additional \$100,000 per month for each month after the first six months after the Petition Date until paid in full."



follows. They are not in the business of lending money to bankrupt estates; rather, they seek to provide the operating capital needed to keep the Debtors alive until the Carliles have sufficient time to purchase the Debtors' assets through a chapter 11 plan. The Carliles explain that Agreement Section 8.16 does not prohibit the Debtors from filing a plan that contains a higher and better offer for the assets than the Carliles' offer; rather, Agreement Section 8.16 ensures the Carliles reasonable and appropriate reimbursement and compensation, given the particular facts of the Debtors' Cases, if the assets are sold to another buyer.

(G) The provisions of this order bind the Debtors with respect to releases of the Indenture Trustee, SP 50, Carlile Development and the Carliles, but no other parties are deemed to grant releases under this order except as is otherwise set forth in paragraph (A) just above or paragraph (N) just below.

(N) The provisions of this order bind a later appointed trustee to the agreement of the Debtors in two ways. One is set forth in paragraph (A) above. Here is the other:

Other than the Debtors, any party with standing to do so, but only to the extent of that party's standing, may commence an appropriate adversary proceeding or contested matter objecting to anything contained in the DIP Facility Documents or anything concerning the DIP Lender or the Indenture Trustee no later than the earliest of (i) twenty eight (28) days after the Maturity Date, (ii) the payment in full of all outstanding principal and interest under the DIP Facility, or (iii) the entry of an order under Bankruptcy Code § 1129. If no such adversary proceeding or contested matter is timely filed, then the following will occur without further notice, opportunity to be heard, or order of the Bankruptcy Court:

(i) the DIP Liens will be deemed legal, valid, binding, enforceable, perfected, non-avoidable, and not subject to attack by any Bound Parties; and

(ii) All DIP Obligations shall be conclusive and binding upon all Bound Parties as legal, valid, binding, enforceable claims that are not subject to offset, counterclaim, equitable subordination, recharacterization, or other defense or claim;

(iii) the DIP Lender, the Indenture Trustee, the Carliles, all their officers, agents, employees, affiliates, and assigns, will be deemed to be released from any claims or other liability whatsoever arising from or related to the DIP Facility, the DIP Collateral, the DIP Liens, the DIP Facility Documents, the DIP Liens or the DIP Obligations; and

(iv) by operation of DIP Agreement Section 10(c), the Debtors' estates, and the DIP Collateral, will be released from the indemnity obligations set forth in DIP Agreement Sections 10(a) and 10(b) and any other indemnification obligations.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and Local Civil Rule 83.IX.01 of the United States District Court for District of South Carolina. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

6. 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 debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

7. 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.

8. 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 Cherry Declaration filed with the Court.

### **RELIEF REQUESTED**

9. By this Motion, the Debtors request the authority to enter into the DIP Facility with the DIP Lender, pursuant to the terms of this Motion, the DIP Orders, and the DIP Credit Agreement.

10. Pending entry of the Final Order, the Debtors request that the Court authorize the Debtors, on an interim basis, to borrow up to \$3 million pursuant to the terms and conditions of the DIP Facility. Moreover, the Debtors request that the Court approve the proposed notice of the Final Hearing and the adequacy of the proposed service thereof, and schedule the Final Hearing.

## **DEBTORS' PROPOSED POSTPETITION FINANCING**

### **Immediate Need for Postpetition Financing**

11. The Debtors lack sufficient unencumbered funds with which to operate and maintain their businesses and assets during the pendency of these Chapter 11 cases. As described more fully in the Cherry Declaration, the Debtors' ability to satisfy critical operating expenses is essential to the Debtors' ability to maintain their asset values. Accordingly, the Debtors have an immediate need for debtor-in-possession financing, coupled with the use of cash collateral that is the subject of a separate motion filed contemporaneously herewith, as set forth more fully herein.

### **Background of the DIP Facility**

12. To provide the Debtors with the funding necessary to fulfill their administrative and operational obligations throughout the duration of these Chapter 11 cases, the Debtors require a postpetition lending facility. In exploring their options, the Debtors recognized that the obligations owed to the Debtors' prepetition senior secured parties (such parties in such capacities, the "Prepetition Secured Parties"), including (a) Wells Fargo Bank, National Association, as trustee (in such capacity, the "Indenture Trustee") under that certain Indenture dated as of April 30, 2010 (as in effect on the date hereof, the "Indenture"), by and among The Cliffs Club & Hospitality Group, Inc., the Guarantors (as defined therein) and the Indenture Trustee, (b) the holders of those certain Series A Notes due 2017 (the "Series A Notes") and those certain Series B Notes due 2017 (the "Series B Notes" together with the Series A Notes, collectively, the "Notes") issued in connection with the Indenture (collectively, the "Note Holders"), (c) the Indenture Trustee, in its capacity as the maker of a \$2,000,000 advance pursuant to that certain Amended and Restated Agreement Relating to Bridge Loan executed by the Indenture Trustee, The Cliffs Club & Hospitality Group, Inc., and SP 50, on or about

February 21, 2012 (as in effect on the date hereof, the "Prepetition Bridge Loan Agreement"; together with the Indenture and the Notes, collectively, the "Prepetition Loan Documents"), the obligations owed thereto by Debtors (the "Prepetition Obligations") being secured by all collateral (the "Prepetition Collateral") and ancillary documents executed or delivered in connection therewith (the "Prepetition Facility Documents"), and (d) any holder of any properly-filed first priority lien that is senior to the liens of the Indenture Trustee as of the Petition Date (if any), as more fully set forth in the Interim Order, are secured, in whole or in part, by all of their assets, and therefore, (i) the liens of the Prepetition Secured Parties would have to be primed to obtain postpetition financing, (ii) the Debtors would have to find a postpetition lender willing to extend credit that would be junior to the liens of the Prepetition Secured Parties, or (iii) postpetition financing would have to be extended on an unsecured basis. As of the Petition Date, the Indenture Trustee holds claims against the Debtors in an amount not less than \$73,531,505, secured by the Prepetition Collateral.

13. As set forth in the Interim Order, the Prepetition Secured Parties have consented to the priming of their liens on an interim basis (but reserve their rights with respect to a Final Order), in accordance with the terms of the Interim Order and the Interim Cash Collateral Order. Ultimately, the Debtors concluded that the DIP Credit Agreement proposed by the DIP Lender is desirable because, among other things, the DIP Credit Agreement permits the Debtors to secure the postpetition financing required for their reorganization.

14. A comparison of the DIP Lender's proposal to the postpetition facilities obtained by other comparable debtors shows substantial similarities, particularly with respect to pricing and fees.

15. Importantly, the DIP Credit Agreement provides that the Debtors may draw funds immediately (on an interim basis) to meet their administrative and operational obligations during these Chapter 11 cases. Finally, because the DIP Lender is one of the parties to the Prepetition Bridge Loan Agreement, it has a substantial base of knowledge with respect to the Debtors' businesses and assets that provide significant benefits, including, but not limited to, the speed with which it would be able to close the proposed DIP Facility. Consequently, the Debtors determined that the DIP Lender's proposed postpetition financing is the best financing option available under the circumstances.

16. The Debtors and the DIP Lender engaged in vigorous and extensive arms'-length negotiations with respect to the terms and conditions of the DIP Credit Agreement. Indeed, the Debtors estimate that over fifty (50) hours were spent in face-to-face meetings and conference calls, and numerous e-mails and other forms of communications were directed between the parties.

**Use of the DIP Facility**

17. Pursuant to the DIP Credit Agreement, the Debtors may use the proceeds of the DIP Facility to pay the transaction costs related to the closing of the DIP Facility and, thereafter, to finance these Chapter 11 cases and for other general corporate purposes pursuant to the DIP Budget to be attached to the DIP Orders.

18. Each of the proposed uses of the DIP Facility confers a direct benefit upon the Debtors and their estates. Among other things, the DIP Facility allows the Debtors to finance the ordinary costs of their operations, maintain business relationships with vendors, suppliers and customers, make payroll, and satisfy other working capital and operational needs.

**THE DIP FACILITY SHOULD BE AUTHORIZED**

19. The provisions of the DIP Credit Agreement were extensively negotiated. The DIP Credit Agreement enables the Debtors to obtain the financing necessary to maintain their operations, pursue reorganization, and maximize the value of their estates.

20. Approval of the DIP Credit Agreement will provide the Debtors with immediate and ongoing access to borrowing availability to pay the Debtors' current and ongoing operating expenses, including postpetition wages and salaries, and utility and vendor costs. Unless these expenditures are made, the Debtors would be forced to cease operations, which would result in irreparable harm to their businesses and going concern value and would jeopardize the Debtors' ability to reorganize. The Debtors' reorganization depends in large part on maintaining and/or restoring customer and employee confidence and maintaining the operation of their businesses as they restructure. Accordingly, the Debtors have an immediate need to access the DIP Facility in order to, among other things, permit the orderly operation of their businesses by timely procuring and paying vendors, providing customer care and paying the employees at their facilities, thereby maximizing recoveries for the Debtors' stakeholders. The Debtors believe that such financing, coupled with the use of cash collateral, will enable them to stabilize operations and ultimately, in conjunction with a reorganization, restore their profitability. Accordingly, the timely approval of the relief requested herein is imperative.

21. Section 364(c) of the Bankruptcy Code provides, among other things, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, the court may authorize the debtor to obtain credit or incur debt (a) with priority over any and all administrative expenses as specified in section 503(b) or 507(b) of the Bankruptcy Code, (b) secured by a lien on property of the estate that is not otherwise subject to a lien, or (c) secured by a junior lien on property of the estate that is subject

to a lien. 11 U.S.C. § 364. Section 364(d) of the Bankruptcy Code allows a debtor to obtain credit secured by a senior or equal lien on property of the estate that is subject to a lien, provided that (i) the debtor is unable to obtain such credit otherwise, and (ii) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted. 11 U.S.C. § 364(d).

22. The Debtors' liquidity needs can be satisfied only if the Debtors are immediately authorized to obtain the postpetition financing set forth herein. The Debtors have been unable to (A) procure sufficient financing (i) in the form of unsecured credit allowable under section 503(b)(1), (ii) as an administrative expense under section 364(a) or (b), (iii) in exchange for the grant of a super-priority administrative expense claim pursuant to section 364(c)(1), (iv) without granting priming liens pursuant to section 364(d), and (B) obtain postpetition financing or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions than those for which approval is sought herein. Therefore, the Debtors propose to obtain the financing set forth in the DIP Credit Agreement by providing, *inter alia*, super-priority claims, security interests, and liens pursuant to sections 364(c)(1), (2), (3) and (d) of the Bankruptcy Code.

23. Having determined that financing is available only under sections 364(c) and (d) of the Bankruptcy Code, the Debtors negotiated the DIP Facility with the DIP Lender extensively and at arms-length. Bankruptcy courts routinely defer to the debtor's business judgment on most business decisions, including the decision to borrow money. *See, e.g., Group of Institutional Investors v. Chicago, Mil., St. P., & Pac. R.R. Co.*, 318 U.S. 523, 550 (1943); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985) ("Business judgments should be left to the board room and not to this Court."); *In re Lifeguard Indus., Inc.*, 37 B.R. 3,

17 (Bankr. S.D. Ohio 1983) (same). “More exacting scrutiny would slow the administration of the debtor’s estate and increase its cost, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially.” *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985). Provided that a debtor’s business judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant debtors considerable deference in acting in accordance therewith. *See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest.”). *See also In re Funding Sys. Asset Mgmt. Corp.*, 72 B.R. 87, 88 (Bankr. W.D. Pa. 1987); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985).

24. Furthermore, section 364(d) does not require that a debtor seek alternative financing from every possible lender; rather, the debtor simply must demonstrate sufficient efforts to obtain financing without the need to grant a senior lien. *In re Snowshoe Co.*, 789 F.2d 1085, 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (Debtors testified to numerous failed attempts to procure financing from various sources, explaining that “most lend money only in return for a senior secured position”); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa.



1991) (debtor adequately established that some degree of priming loan was necessary if debtor was to obtain funding). It is well established that the appropriateness of a proposed post-petition financing facility must be considered in light of current market conditions. *See, e.g., In re Lyondell Chem. Co.*, No. 09-10023, Transcript of Record at 734-35:24-1 (Bankr. S.D.N.Y. Mar. 5, 2009) (recognizing “the terms that are now available for DIP facilities in the current economic environment aren’t as desirable” as they have been in the past); *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (noting that a debtor is not required to seek credit from every possible lender before determining such credit is available). Indeed, where there are few lenders likely to be able and willing to extend the necessary credit to the debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct . . . an exhaustive search for financing.” *See, e.g., In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d*, 99 B.R. 117 (N.D. Ga. 1989).

25. Substantially all of the Debtors’ assets are encumbered and, despite the diligent efforts of the Debtors, the Debtors have been unable to procure the required funding absent granting the proposed super-priority claims and priming liens. The Debtors have negotiated the best terms available to obtain funding they need to maintain sufficient liquidity to preserve their assets over the course of these Chapter 11 cases. The Debtors submit that the circumstances of these Chapter 11 cases require the Debtors to obtain financing under sections 364(c) and (d) of the Bankruptcy Code, and accordingly, the DIP Facility reflects the exercise of their sound business judgment. The Debtors further recognize that without the consent of the Indenture Trustee to the proposed priming of the Indenture Trustee’s liens, it would be difficult to provide the adequate protection required under the Bankruptcy Code. The Interim Order and proposed Interim Cash Collateral Order represent an agreement reached with the Indenture Trustee as to a

package of adequate protection sufficient to obtain the Indenture Trustee's consent to the proposed priming of its liens under the terms of the Interim Order.

26. The terms and conditions of the DIP Facility are fair and reasonable, and were negotiated extensively by well-represented, independent parties in good faith and at arms' length. Accordingly, the DIP Lender and all obligations incurred under the DIP Facility should be accorded the benefits of section 364(e) of the Bankruptcy Code.

**THE AUTOMATIC STAY SHOULD BE MODIFIED ON A LIMITED BASIS**

27. The relief requested herein contemplates a modification of the automatic stay (to the extent applicable) to permit the Debtors to (i) grant the security interests, liens, and super-priority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (ii) permit the DIP Lender to exercise, upon the occurrence and during the continuance of an Event of Default and after fourteen (14) days' notice thereof, all rights and remedies under the DIP Credit Agreement; and (iii) implement the terms of the proposed DIP Orders.

28. Stay modifications of this kind are ordinary and standard features of postpetition debtor financing facilities and, in the Debtors' business judgment, are reasonable and fair under the present circumstances.

**INTERIM APPROVAL SHOULD BE GRANTED**

29. Bankruptcy Rule 4001(c) provides that a final hearing on a motion to obtain credit may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing.

30. Pursuant to Bankruptcy Rule 4001(c), the Debtors request that the Court conduct an expedited preliminary hearing on this Motion and (a) authorize the Borrowers to borrow up to \$3 million under the DIP Facility on an interim basis, pending entry of a final order, in order to (i) maintain and finance the ongoing operations of the Debtors, and (ii) avoid immediate and irreparable harm and prejudice to the Debtors' estates and all parties in interest; and (b) schedule the Final Hearing.

31. The Debtors have an urgent and immediate need for cash to continue to operate. Currently, the Debtors do not have sufficient funds with which to operate their businesses on an ongoing basis. Absent authorization from the Court to obtain secured credit, as requested, on an interim basis pending the Final Hearing, the Debtors will be immediately and irreparably harmed. The availability of interim loans under the DIP Facility will provide necessary assurance that the Debtors will be able to meet their near-term obligations. Failure to meet these obligations likely would have a long-term negative impact on the value of the Debtors' businesses, to the detriment of all parties in interest. Furthermore, the lack of an interim facility would result in accelerated cash demands on the Debtors. Accordingly, the interim relief requested is critical to preserving and maintaining the going concern value of the Debtors and facilitating their reorganization efforts.

**THE DEBTORS SATISFY BANKRUPTCY RULE 6003**

32. Bankruptcy Rule 6003 provides that to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may approve a motion to "pay all or part of a claim that arose before the filing of the petition" prior to twenty-one (21) days after the commencement date. Fed. R. Bankr. P. 6003. As described above and in the Cherry Declaration, the Debtors' businesses operations depend on the DIP Facility. The Debtors submit

that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors, as described herein, and that Bankruptcy Rule 6003 has been satisfied.

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

33. 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).

**NOTICE**

34. 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 the these 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. The Debtors submit that, under the circumstances, no other or further notice is required.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter the Interim 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/ Däna Wilkinson  
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