

**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 ENTRY OF AN ORDER PURSUANT TO SECTIONS
105(A) AND 365(A) OF THE BANKRUPTCY CODE AND RULE 6006 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE
APPROVING THE ASSUMPTION OF UNEXPIRED LEASE**

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 pursuant to sections 105(a) and 365(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") approving the Debtors' assumption of a certain unexpired lease of nonresidential real property. In support of the Motion, the Debtors respectfully represent 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 (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 105(a) and 365(a) of the Bankruptcy Code.

FACTUAL 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].

8. On July 2, 2012, the Debtors filed their First Amended and Restated Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor dated June 30, 2012, as amended [Docket Entry No. 616, Ex. A] (the “Plan”)² and the First Amended and Restated Disclosure Statement to Accompany the First Amended and Restated Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor [Docket Entry No. 480] (the “Disclosure Statement”).

RELIEF REQUESTED AND BASIS THEREFOR

9. In accordance with sections 105(a) and 365(a) of the Bankruptcy Code and Rule 6006 of the Bankruptcy Rules, the Debtors seek authorization to assume that certain Lease dated June 3, 2010 by and between The Cliffs at Walnut Cove, LLC and The Cliffs at Walnut Cove Golf & Country Club, LLC (the “Nature Center Lease”), a copy of which is attached hereto as Exhibit “A”.

10. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor, “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*, 465 U.S. 513, 521 (1984). “[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) *cert. dismissed*, 511 U.S. 1026, 114 S.Ct. 1418, 128 L.Ed.2d 88 (1994) (internal quotation marks

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

and reference omitted). *See also In re U.S. Wireless Data, Inc.*, 547 F.3d 484, 488 (2d Cir. 2008) (per curiam) (“[C]ontract assumption is an important re-organizational tool under Chapter 11 because it allows a trustee, or a debtor in possession . . . ‘to go through the inventory of executory contracts . . . and decide which ones it would be beneficial to adhere to and which ones it would be beneficial to reject.’”) (quoting *Med. Malpractice Ins. Ass’n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 386 (2d Cir. 1997)); *Kopel v. Pasquale Campanile (In re Kopel)*, 232 B.R. 57, 63 (Bankr. E.D.N.Y. 1999) (“Generally, section 365(a) permits debtors to assume beneficial executory contracts and reject burdensome ones in order to facilitate reorganization.”). Section 365 enables a debtor to compel non-debtor parties to contracts “to continue to do business with it when the bankruptcy filing might otherwise make them reluctant to do so.” *In re Chateaugay Corp.*, 10 F.3d 944, 955 (2d Cir. 1993) (internal quotation marks omitted). “Assumption in effect restores the debtor-creditor relationship to pre-default conditions, bringing the lease back into compliance with its terms.” *In re Rock 49th Rest. Corp.*, 2010 WL 1418863, 4-5 (Bankr. S.D.N.Y. 2010) (citing *In re DBSI, Inc.*, 405 B.R. 698, 704 (Bankr. D. Del. 2009)).

11. Assumption is generally subject to court approval based on a review of the totality of the circumstances. *In re Park Ave. Garage*, 403 Fed.Appx. at 557; *In re U.S. Wireless Data*, 547 F.3d at 488. “A bankruptcy court reviewing a trustee’s or debtor in possession’s decision to assume or reject an executory contract should examine a contract and the surrounding circumstances and apply its best ‘business judgment’ to determine if it would be beneficial or burdensome to the estate to assume it. . . . [T]he process of deciding a motion to assume is one of the bankruptcy court placing itself in the position of the trustee or debtor-in-possession and determining whether assuming the contract would be a good business

decision or a bad one.” *In re Orion Pictures Corp.*, 4 F.3d at 1099 (citing *Control Data Corp. v. Zelman (In re Minges)*, 602 F.2d 38, 42-43 (2d Cir. 1979)). Thus, courts generally defer to a debtor’s business judgment in assuming an executory contract or unexpired lease, and upon finding that a debtor has exercised its sound business judgment, approve a debtor’s decision to assume under section 365(a) of the Bankruptcy Code. See *Bildisco & Bildisco*, 465 U.S. at 523; *In re Park Ave. Garage*, 403 Fed.Appx. at 557; *U.S. Wireless Data*, 547 F.3d at 488; *COR Route 5 Company, LLC v. The Penn Traffic Company (In re The Penn Traffic Co.)*, 524 F.3d 373, 383 (2d Cir. 2008); *Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996); *In re Minges*, 602 F.2d at 42-43; *In re Gucci*, 193 B.R. 411, 415 (S.D.N.Y. 1996); *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009); *In re Spectrum Info. Techs., Inc.*, 190 B.R. 741, 745-46 (Bankr. E.D.N.Y. 1996).

12. In the present case, the Debtors have exercised their business judgment and have determined that assumption of the Nature Center Lease is beneficial to the Debtors, their creditors and the parties in interest in these Chapter 11 cases. The Nature Center Lease is a 99-year lease with \$1.00 annual lease payments. No cure cost would have to be paid in connection with the Debtors’ assumption of the Nature Center Lease. The Debtors have appropriately determined that the benefits of assuming the Nature Center Lease outweigh the burdens of doing so; accordingly, the decision to assume the Nature Center Lease is a proper exercise of the Debtors’ business judgment.

13. Moreover, the Debtors originally listed the Nature Center Lease on the Schedule of Assumed Contracts attached as Exhibit 1 to the Plan, indicating the Debtors’ intention to assume the Nature Center Lease and assign it to the Plan Sponsor in accordance with the provisions of Article VI of the Plan. Inadvertently, the Nature Center Lease was

removed from the Schedule of Assumed Contracts in connection with the Statement of Changes Made by Amendment to the Plan filed on July 27, 2012 [Docket Entry No. 616]. Plan Section 6.01 provides that no unexpired lease will be deemed rejected by the Plan provided that such unexpired lease is the subject of a pending motion to assume and assign such lease as of the date on which this Court enters its order confirming the Plan (which has not yet occurred as of the date of this Motion). The Debtors file this Motion to effectuate their original intention to assume and assign the Nature Center Lease. No parties in interest objected to the Debtors' original proposed assumption and assignment of the Nature Center Lease. Accordingly, the Debtors respectfully submit that the relief proposed herein does not prejudice any party in interest.

14. In light of the foregoing, the Debtors respectfully request that the Court approve its assumption of the Nature Center Lease.

NOTICE OF THIS MOTION

15. 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 the counterparty to the Nature Center Lease. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

16. 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: August 16, 2012

Respectfully submitted,

/s/ Däna Wilkinson

Däna Wilkinson
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Attorneys for Debtors and Debtors in Possession

EXHIBIT A

NATURE CENTER LEASE

SOUTH CAROLINA) LEASE
GREENVILLE COUNTY)

This Lease, made and entered into this 3 day of June, 2010, by and between Cliffs at Walnut Cove, LLC (hereinafter referred to as the "Landlord"); and Cliffs at Walnut Cove Golf & Country Club, LLC, duly organized and existing under the laws of the State of North Carolina (hereinafter referred to as the "Tenant").

WITNESSETH:

That for and in consideration of the rental hereinafter reserved and the covenants and agreements herein contained, Landlord has agreed to lease and does hereby demise and lease unto Tenant, and Tenant has agreed to take and lease and does hereby lease from Landlord, the premises known as 8 Falling Waters Trail, Arden, NC 28704 containing approximately 4,540 square feet of interior space, parking area and 2.58 acres of land (adjacent to the said building) all equipment currently in the building.:

1. Term of Lease:

The term of this Lease shall be for a period of ninety-nine years, commencing at 12:00 noon on this the 3rd day of June, 2010 and ending at 12:00 noon on the 3rd day of June, 2109, both dates inclusive.

2. Rental:

The total amount of rental shall be One Dollar (\$1.00) per annum payable each year on the anniversary date of this agreement.

3. Utilities:

The Tenant shall pay all charges for gas, electricity, water, light, heat, power and telephone or other communication service used, rendered, or supplied upon or in connection with the leased property.

4. Taxes:

The Tenant shall pay when due, all taxes and assessments of any kind or nature which are now or may hereafter be imposed upon the demised premises.

5. Alterations:

The Tenant shall not use the property in any manner that would cause the title and beneficial ownership of the property to revert to the Grantor or her then living issue, per stripes, under the terms of the reversion clause included in the Landlord's North Carolina General Warranty Deed recorded in the Buncombe County, North Carolina, Public Registry, Book 4306 Pages 228-230, which specifically requires that the Dubose house not be used as a private residence or for another use not available to all of the residents of the Cliffs at Walnut Cove Development for the period of time of fifty years following date of 25 October 2006.

6. Assignment and Subletting:

Tenant or its successors shall not have the right to assign or sublet the leased premises in whole or in part.

7. Insurance:

Tenant agrees that it will at all times during the term hereof, at its own expense, maintain and keep in force public liability insurance against claims for bodily injury, death or property damage occurring in or on or about the demised premises and will also provide at its sole cost and expense, such fire and extended coverage and vandalism and malicious mischief insurance covering the contents of the demised premises as the Tenant deems advisable. The Tenant at its sole cost and expense shall keep the premises and the building and improvements thereon, to wit: all of the property deemed to be real property under the terms of this Lease insured to the extent of the full replacement cost thereof against loss or damage by fire, with extended coverage.

8. Damage and Destruction:

If the leased premises be damaged or destroyed in whole or in part at any time during the term of this Lease by fire or other casualty, The Tenant will within ninety (90) days of the destruction or damage to the property notify the Landlord in writing whether it elects to restore the property or to terminate the Lease. However, the Landlord may elect to restore the premises to the condition existing before the damage or destruction; if so the lease shall continue to be in full effect for the duration of this agreement.

9. Repairs:

The Tenant shall be responsible for all repairs to the property both interior and exterior, including but not limited to the roof and the walls of the demised premises, and the parking lot. Repairs shall include, but is not limited to all the electrical, plumbing, heating, air conditioning and other mechanical installations therein and all doors and windows in good order and repair.

10. Quiet Enjoyment:

Tenant, upon paying the rent, and subject to all of the terms and covenants of this Lease, on Tenant's part to be kept, observed, and performed, shall quietly have and enjoy the leased

premises during the term of this Lease without hindrance or molestation by any person. Landlord for himself, his heirs, successors and assigns, agrees that Tenant shall have continuous, peaceful, uninterrupted and exclusive possession and quiet enjoyment of the entire premises during the term of this Lease. The Landlord covenants that at the time of the execution of this Lease, Landlord is in legal possession of the demised premises, has full right to lease the same for the term aforesaid, and will put Tenant in actual possession of the premises hereinbefore provided.

11. Uses of the Building and Adjacent Property:

The Tenant shall be restricted in the use of the property by the reversion clause included in the Landlords, North Carolina General Warranty Deed recorded in Buncombe County, North Carolina Book 4306 Pages 228-230 which requires that the building not be used as a private residence of for another use not available to all of the residents of the Walnut Cove Development.

12. Indemnification

To the fullest extent permitted by law, Tenant agrees to indemnify, defend and save Landlord, its affiliated companies, respective agents, officers, shareholders, and employees harmless from and against all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses (including, but not limited to, Landlord's attorneys' fees) that may be imposed upon, incurred by or asserted against Landlord by reason of:

Any work or thing to be done in, on or about the Premises or any part thereof:

Any use, occupation, condition, operation of the Premises or any part thereof or of any Adjacent Facility or any occurrence on any of the same;

Any action or omission on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees;

Any accident, injury (including death) or damage, regardless of the cause thereof, to any person or property occurring in, on or about the Premises or any part thereof or any Adjacent Facility or in any place that Tenant conducts its business; and/or

Any failure on Tenant's part to perform or comply with any of the covenants, agreements, terms or conditions in this Lease or in any sublease, license, concession or other agreement entered into by Tenant.

The provisions of this Section shall survive the expiration or earlier termination of this Lease. Tenant agrees to pay, and to indemnify Landlord against, all costs and expenses (including, but not limited to, Landlord's reasonable attorneys' fees) incurred by or imposed upon Landlord by

or in connection with any litigation to which Landlord becomes or is made a party without fault in its part, whether commenced by or against Tenant, or that may be incurred by Landlord in enforcing any of the covenants and agreements of this Lease (with or without the institution of any action or proceeding relating to the Premises or this Lease) or in obtaining possession of the Premises after an Event of Default or upon expiration or earlier termination of this Lease.

13. Notices:

Notices may be sent by the Tenant or to the Landlord by delivering the same in person to the either or mailed to the following address:

Landlord: The Cliffs at Walnut Cove, LLC
3598 Highway 11
Travelers Rest, SC 29690

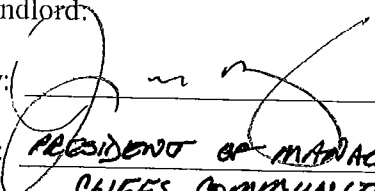
Tenant: The Cliffs at Walnut Cove Golf & Country Club, LLC
3598 Highway 11
Travelers Rest, SC 29690

13. Miscellaneous:

This agreement shall be binding upon the parties, their heirs, assigns, personal representatives and successors in interest. This agreement may be executed in one or more counterparts each of which shall be deemed to be an original.

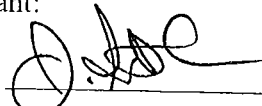
In Witness Whereof, the parties have hereunto set their hands and seals, the day and year first above written.

Landlord:

By:  (SEAL)

Its: PRESIDENT & MANAGING MEMBER
CLIFFS COMMUNITIES, INC

Tenant:

By:  (SEAL)

Its: PRESIDENT, CLIFFS CLUB & HOSPITALITY GROUP, INC
MANAGING MEMBER

EXHIBIT B

PROPOSED ORDER

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

Case No. 12-01220

**ORDER APPROVING DEBTORS' MOTION FOR ENTRY OF AN ORDER
PURSUANT TO SECTIONS 105(A) AND 365(A) OF THE BANKRUPTCY CODE
AND RULE 6006 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
APPROVING THE ASSUMPTION OF UNEXPIRED LEASE**

The relief set forth on the following pages, for a total of 4 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.,¹ d/b/a The Cliffs Golf & Country Club,**

Debtors.

CHAPTER 11

Case No. 12-01220

Jointly Administered

**ORDER APPROVING DEBTORS' MOTION FOR ENTRY OF AN ORDER
PURSUANT TO SECTIONS 105(A) AND 365(A) OF THE BANKRUPTCY CODE
AND RULE 6006 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
APPROVING THE ASSUMPTION OF UNEXPIRED LEASE**

Upon the motion [Docket Entry No. ____] (the "Motion")² 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 sections 105(a) and 365(a) of the Bankruptcy Code authorizing the Debtors' assumption of the Nature Center Lease; 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 the Motion having been

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 (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).

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

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

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtors are hereby authorized to assume the Nature Center Lease and assign the Nature Center Lease to the Plan Sponsor in accordance with the provisions of Article VI of the Plan.
3. The Debtors and Plan Sponsor are authorized to take such actions as are necessary to implement and effectuate the terms of this Order.
4. 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:

/s/ Däna Wilkinson
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