

UNITES STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IN RE: §
THE CLIFFS CLUB & HOSPITALITY § CASE NO. 12-01220
GROUP, INC., ET AL., d/b/a THE §
CLIFFS GOLF & COUNTRY CLUB § CHAPTER 11
§
DEBTORS. § Jointly Administered

**NOTICE OF MOTION FOR ALLOWANCE OF AND REQUEST FOR PAYMENT OF
ADMINISTRATIVE EXPENSE PRIORITY PURSUANT TO 11 U.S.C. §§ 503, 507
AND OPPORTUNITY FOR HEARING**

TAKE NOTICE that Mitel Leasing, Inc. filed a Motion for Allowance of and Request for Payment of Administrative Expenses Pursuant to 11 U.S.C. §§ 503, 507 and Brief in Support (the "Motion").

A copy of the Motion and a proposed order accompanies this notice.

TAKE FURTHER NOTICE that any response, return, and/or objection to this Motion should be filed with the Court no later than twenty-one (21) days from service of Motion.

TAKE FURTHER NOTICE that no hearing will be held on this motion, except at the direction of the Court, unless a response, return, and/or objection is timely filed and served, in which case the Court will conduct a hearing on October 12, 2012, at 9:00 a.m., at 1100 Laurel Street, Columbia, South Carolina. No further notice of this hearing will be given.

Date: **September 14, 2012**

s/ J. Ronald Jones, Jr.
J. Ronald Jones, Jr.
U. S. District Court ID 5874
CLAWSON AND STAUBES, LLC
126 Seven Farms Drive, Suite 200
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Charleston, South Carolina

**UNITES STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

IN RE:	§	
THE CLIFFS CLUB & HOSPITALITY	§	CASE NO. 12-01220
GROUP, INC., ET AL.,¹ d/b/a THE	§	
CLIFFS GOLF & COUNTRY CLUB	§	CHAPTER 11
	§	
DEBTORS.	§	Jointly Administered

**MOTION OF MITEL LEASING, INC. FOR ALLOWANCE OF AND REQUEST FOR
PAYMENT OF ADMINISTRATIVE EXPENSES PURSUANT TO 11 U.S.C. §§ 503, 507
AND MEMORANDUM IN SUPPORT**

COMES NOW, Mitel Leasing, Inc. (“Mitel”) and hereby files this, its Motion to for Allowance of and Request for Payment of Administrative Expenses Pursuant to 11 U.S.C. §§ 503, 507 and Brief in Support (the “Motion”) and, in support thereof, respectfully submits as follows:

Factual Background

1. Mitel is a telecommunications service provider. On or about April 30, 2009, Mitel entered into a 60-month lease agreement for telecommunications equipment with Cliffs Communities, Inc. (hereinafter “Cliffs Communities”), the parent company of Debtors (the “Lease”). Under the Lease, Mitel was to provide telecommunications equipment to various locations belonging to Debtors, at Cliffs Communities’ request. A copy of the Lease is attached hereto as Exhibit “A” and

¹ Debtors, followed by the last four digits of their respective taxpayer identification number, 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 Gold & Country Club, LLC (9879); The Cliffs at Keowee Falls Golf & Country Club, LLC (3230); The Cliffs at Keowee Springs Gold & 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); and Cliffs Club & Hospitality Service Company, LLC (9665).

incorporated herein by reference. Pursuant to the Lease, Mitel installed telecommunications equipment at various locations owned by Debtors and designated by Cliffs Communities.

2. On February 28, 2012, Debtors filed for Chapter 11 bankruptcy in this Court.

3. Debtors used and continue to use Mitel's telecommunications equipment at their various locations post-petition, and the bankruptcy estates have benefitted therefrom. To date, Debtors have failed to pay for these post-petition services in the amount of \$101,249.45 (the "Administrative Claim"). A true and correct copy of a summary of the Administrative Claim is attached hereto as Exhibit "B" and incorporated herein by reference (hereinafter the "Summary"). Mitel has received no compensation for these services from Cliffs Communities or any other entity.

Relief Requested

4. Pursuant to 11 U.S.C. §§ 503,507, Mitel respectfully requests the Court enter an order compelling payment of the Administrative Claim. The Administrative Claim represents the reasonably equivalent value of the benefit conferred on the Debtors for their post-petition use of Mitel's telecommunications equipment. Mitel respectfully requests that the Court enter an order compelling the Debtor to pay the Administrative Claim within ten (10) days of entry of such order.

Brief In Support

Mitel is entitled to payment of its Administrative Claim because it has conferred a benefit on Debtors' bankruptcy estates. The Bankruptcy Code affords first priority to

payment of the “actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. §§ 503(b); 507(a)(1). A debt that arises post-petition is entitled to be treated as an administrative expense if it is “ordinarily incident to the operation of the estate’s post-petition business.” See *In re Lucre, Inc.*, 434 B.R. 807, 822 (Bankr. W.D. Mich. 2010). In other words, a third party confers a benefit on a debtor if its provision of goods or services “enhance[s] the ability of the debtor-in-possession’s business to function as a going concern.” *Matter of TransAmerican Natural Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992). A debtor’s use of telephone services or equipment in its post-petition business benefits the bankruptcy estate. See e.g., *In re Midway Airlines Corp.*, 406 F.3d 229, 233 (4th Cir. 2005); see also *In re Lucre, Inc.*, 434 B.R. at 822 (Bankr. W.D. Mich. 2010).

The principle behind priority status for administrative claims is “to prevent unjust enrichment of estate....” *Matter of TransAmerican*, 978 F.2d at 1419-1420. Administrative status encourages third parties to provide necessary goods and services to a debtor post-petition. *Id.* at 1420. Accordingly, administrative claimants are entitled to the reasonable value of the benefit they concurred on a debtor during bankruptcy. *Id.* at 1419-1420. Under circumstances involving a lease, the contractual rate is presumed to represent reasonable value. See *In re D.M Kaye & Sons Transport, Inc.*, 259 B.R. 114, 123 (Bankr. S.C. 2001); see also *In re Aerospace Technologies, Inc.*, 199 B.R. 331, 340 (Bankr. M.D.N.C. 1996).

Debtors have used and continue to use Mitel’s telecommunications equipment in their ordinary course of business. Site assessments by Mitel have revealed that Mitel installed and Debtor has used equipment under the Lease at a minimum of twelve

locations belonging to Debtors.² (See Ex. A). Debtors have continued to operate their businesses, which inherently involve the use of telecommunications equipment, throughout the bankruptcy cases. Therefore, it is clear Mitel has conferred a benefit on the bankruptcy estates by “enhance[ing] the ability of the debtor-in-possession’s business to function as a going concern.” *TransAmerican*, 978 F.2d at 1416.

The Administrative Claim reflects the value of the benefit Mitel has conferred on Debtors throughout the bankruptcy cases. The Summary reflects Mitel’s invoices calculated in accordance with the Lease for use of Mitel’s equipment provided post-petition to date. (See Ex. B). Because these invoices were issued pursuant to the Lease terms, they presumably represent the fair and reasonable value of the benefit conferred on Debtors. Accordingly, the Court should grant this Motion and compel payment of the Administrative Claim within ten (10) days.

WHEREFORE PREMISES CONSIDERED, Mitel respectfully requests this Court grant this Motion to Allow Payment of Administrative Expenses and direct payment of the Administrative Claim within ten (10) days of such order, and for such further relief, both at law and equity, to which Mitel is entitled.

Respectfully submitted,

S/J. Ronald Jones, Jr.
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² These properties include two administrative offices, and sales and club houses owned by Keowee Vineyards, Walnut Cove, Keowee Falls, Keowee Springs, High Carolina, Glassy, and Cliffs Valley.

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