

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

Joint Administration Pending

**DEBTORS' MOTION FOR AUTHORITY (I) TO PAY CERTAIN
ACCRUED PRE-PETITION WAGES, EMPLOYEE BENEFITS, TAXES AND
RELATED CLAIMS, AND (II) FOR FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

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(b), and 507(a) of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), move the Court to enter an order authorizing, but not directing, the Debtors to: (i) pay pre-petition wages, salaries, employee benefits and other compensation and costs, and (ii) for financial institutions to honor and process checks and transfers related to such obligations, all subject to terms of the DIP Budget (as defined in the orders approving the use of cash collateral and debtor-in-possession financing) and the orders

¹ 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).

relating to use of cash collateral and debtor-in-possession financing (collectively, the “Financing Orders”). In support of this Motion, the Debtors state as follows:

PRELIMINARY STATEMENT

Cliffs Club & Hospitality Service Company, LLC (“Service Company”), one of the Debtors, employs approximately 402 employees in connection with the operation of the Debtors’ businesses. The employees assist with every aspect of Debtors’ businesses. Their knowledge, expertise and experience are essential to maintaining the Debtors as going concerns during their Chapter 11 reorganizations. Indeed, without these employees’ continued commitment to the Debtors’ business operations, effective reorganizations may not be possible. Accordingly, by this Motion, the Debtors seek authorization to pay, in their sole discretion, certain outstanding pre-petition employee compensation and benefit obligations, and certain costs and obligations related thereto, up to \$11,725 per employee. The relief requested herein is essential to ensure a seamless transition into Chapter 11 by maintaining employee morale and productivity as the Debtors pursue effective and expeditious reorganizations of their businesses.

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"), filed contemporaneously herewith.

5. The Debtors have filed a motion seeking joint administration of their Chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

RELIEF REQUESTED

6. In the ordinary course of business, Service Company incurs payroll and related obligations to 402 employees (the "Employees") for the performance of services in connection with the operations of the Debtors. However, there is a seasonality to the operations of the Debtors. As golf play and club use increases in Spring and Summer, the need for additional seasonal employees will increase the employee headcount, estimated as follows: February, 8-10 additional seasonal employees; March, 20-25 additional seasonal employees; April, 40-45 additional seasonal employees; and May, 80-85 additional seasonal employees.

7. By this Motion, the Debtors seek to make payments to and on behalf of the Employees for certain pre-petition wages, benefits and related taxes, subject to the terms of the DIP Budget and the Financing Orders.

8. Specifically, pursuant to Sections 105(a), 363(b), 507(a)(4), 507(a)(5) and 507(a)(8) of the Bankruptcy Code, the Debtors request entry of an order authorizing, but not directing, the Debtors to pay their Employees for work performed prepetition, to honor certain other prepetition employee-related obligations and benefits, to continue paying their Employee Obligations (as such term is defined herein) and to continue administering their employee programs and plans in the ordinary course of business. The Debtors seek this relief to minimize the personal hardship that the Employees would suffer if they are not paid when due and to

maintain the morale of their essential workforce at this critical time. The Employee Obligations (as such term is defined herein) include: Wage Claims, Employment Tax Claims, Employee Benefits, Pre-Petition Processing Costs, Prepetition Employee Reimbursements (each as defined below), and all fees and costs incident to the foregoing, including amounts owed to third-party administrators (collectively, the "Employee Obligations"). Because of the potential for irreparable harm if the Employee Obligations are not paid or otherwise satisfied when due, the Debtors seek authority to pay such obligations as they become due in the ordinary course of business.

9. In addition, the Debtors seek authorization for applicable banks (collectively, the "Banks") to receive, process, honor and pay any and all checks, electronic fund transfers, and automatic payroll transfers drawn on the Debtors' payroll and/or general disbursement accounts (collectively, the "Disbursement Accounts"), to the extent that such checks or transfers relate to any of the prepetition Employee Obligations.

THE DEBTORS' WORKFORCE

10. As of the Petition Date, Service Company had 402 employees, including 268 full-time employees and 134 part-time and seasonal employees who work for the Debtors. All full-time Employees are eligible for certain benefits, including 401(k) participation, health and dental insurance, short-term and long-term disability, and basic term life insurance. Part-time Employees are eligible for participation in the Debtors' 401(k) program.

11. In addition to the Employees, Service Company retains 25 independent contractors (the "Contractors") to provide commission-based services at the Debtors' club facilities, including personal trainers, massage therapists, an event planner, and tennis professionals. The Contractors are compensated solely through commissions earned or flat fees, and are not eligible for employment benefits or severance payments.

EMPLOYEE PAYROLL AND RELATED OBLIGATIONS

12. The Employees are paid on an hourly and salary basis. The Employees are generally paid on a bi-weekly schedule. As of the Petition Date, the Debtors' employees consist of: (i) approximately 323 who are paid bi-weekly, on an hourly basis; and (ii) approximately 79 who are salaried employees paid bi-weekly. The Debtors' monthly gross payroll is approximately \$680,000. The Debtors' monthly net payroll is approximately \$575,000. The aggregate payroll amount does not include any annual discretionary bonuses, which are paid in March for the preceding year, or commissions for catering managers, which are paid monthly on a calendar basis and typically range from \$0 to \$4,500.

13. As of the Petition Date, the Debtors' payrolls ~~were~~ substantially current as to payment, but the Debtors' payrolls include a period of arrearage. As a result of the timing of the Debtors' Chapter 11 filings, the Debtors' salaried and hourly employees are owed salary and wages on account of what now constitutes pre-petition services.

14. The Debtors estimate that, as of the Petition Date, the total amount of Employee compensation obligations (the "Wage Claims") owed by the Debtors directly to Employees equals approximately \$200,000. It is the Debtors' belief that no Employee's unpaid prepetition salary or wages exceeds the \$11,725 threshold provided in Section 507(a)(4) of the Bankruptcy Code.

15. The Debtors: (i) withhold from each Employee's pay, and remit to the appropriate taxing authorities, certain federal, state, and local income taxes, and social security and Medicare taxes (collectively, the "Payroll Tax Obligations"); and (ii) directly pay state and local unemployment taxes and contributions ("Unemployment Taxes" together with the Payroll Tax Obligations, the "Employment Tax Claims"). Depending on the week, total Payroll Tax payments range from approximately \$100,000 to \$110,000. Because some payments are paid in

arrears, the Debtors estimate that as of the Petition Date, the amount of such unpaid Payroll Tax Obligations and Unemployment Taxes is approximately \$60,000.

16. Federal and State Unemployment Taxes for the previous calendar quarter are current.

17. To maintain the loyalty of the Debtors' Employees, it is essential to fulfill the obligations arising from certain employee benefit programs. The Debtors have established a variety of employee benefit plans and policies, including: (a) benefit plans such as medical, dental, term life, accidental death and dismemberment, and short and long-term disability benefits and/or insurance, and (b) a 401(k) savings plan for certain employees (collectively, the "Employee Benefits").² The Debtors estimate that, as of the Petition Date, their accrued and unpaid obligations in respect of the Employee Benefits aggregate approximately \$150,000. The Debtors seek authorization to pay all accrued but unpaid Employee Benefits.

18. The Debtors incur costs incident to the Employee Obligations, such as processing costs and the employer portion of payroll-related taxes, as well as accrued but unpaid prepetition charges for administration of the Employee Benefits (collectively, the "Prepetition Processing Costs"). The Debtors estimate that the aggregate amount of Prepetition Processing Costs accrued but unpaid, as of the Petition Date, is approximately \$20,000.³ Payment of the

² In addition, the Debtors provide the Employees with certain leave policies and benefits (including military duty leave, jury duty leave, maternity leave, workers' compensation leave, medical leave and family medical leave), some of which are mandated or encouraged by law and some of which may have pay or benefits components. The Debtors also provide their Employees with paid holidays, paid personal days, and paid bereavement leave.

The descriptions of the Debtors' benefit programs contained herein are provided for convenience only and are qualified in all respects by the actual terms of such programs. Nothing contained herein shall have the effect of modifying the terms of the benefit programs or altering any party's rights and obligations thereunder.

³ Of this amount, approximately \$5,000 is attributable to payments required for the continued administration of the Debtors' self-insured and stop-loss health insurance programs.

Prepetition Processing Costs is justified because the failure to pay any such amounts might disrupt services provided by third-party providers with respect to the Employee Obligations. By paying the Prepetition Processing Costs, the Debtors may avoid even temporary disruptions of such services and thereby ensure that the Employees obtain all compensation and benefits without interruption. The Debtors seek authorization to pay all Prepetition Processing Costs.

19. The Debtors customarily reimburse their Employees for a variety of business expenses incurred in the ordinary course of their businesses, for example, Employees may use cash or credit cards (including company credit cards for which they are liable) to pay expenses and seek reimbursement from the Debtors (the “Prepetition Employee Reimbursements”). On average, the Debtors reimburse approximately \$8,000 in Prepetition Employee Reimbursements on a monthly basis. Because Employees submit reimbursement forms on a monthly basis, however, it is difficult for the Debtors to determine the exact amount of Prepetition Employee Reimbursements that are outstanding. The Debtors estimate that, as of the Petition Date, their obligation to Employees for Prepetition Employee Reimbursements is very similar to the monthly average of such expenses set forth above. The Debtors seek authorization to reimburse all Prepetition Employee Reimbursements up to an amount not to exceed \$16,000.

BASIS FOR RELIEF

20. Payment of the Employee Obligations is essential to ensure a seamless transition into Chapter 11 by maintaining employee morale and productivity as the Debtors pursue effective and expeditious reorganizations of their businesses.

21. The Debtors will not make payment of pre-petition obligations to or for the benefit of any Employee who would qualify as an “insider” under the Bankruptcy Code.

22. No employee is owed more than \$11,725 in pre-petition wages or salary. The additional amount attributable for deductions, insurance, and employee benefits are within the

\$11,725 maximum allowed priority amount. The Debtors are not aware of any unusual or extraordinary claims for benefits that would cause the priority claim amount of any individual employee to exceed the \$11,725 priority amount provided for in Section 507(a)(4) of the Bankruptcy Code. The Debtors are not seeking approval for paying, and shall not pay, more than the \$11,725 threshold to any individual Employee for amounts consisting of or relating to Wage Claims and Employee Benefits.

23. Payment of the Employee Obligations will not prejudice other creditors in these Chapter 11 cases. On the contrary, payment will ensure continued, uninterrupted operation of Debtors' businesses and will contribute to the value of Debtors' estates and help to ensure the success of Debtors' efforts in seeking Chapter 11 relief.

24. The Debtors seek the relief requested in this Motion because any delay in paying any of the Employee Obligations could severely disrupt Debtors' relationships with their Employees and irreparably impair their morale at the very time that their dedication, confidence, retention and cooperation are most critical. At this critical stage, the Debtors simply cannot risk the substantial disruption of their business operations that would attend any decline in workforce morale or composition attributable to Debtors' failure to pay the Employee Obligations in the ordinary course of business.

25. Moreover, the Employees are indispensable to the Debtors' ongoing operations. The Employees perform a variety of critical functions for the Debtors. The Employees' skills and knowledge of Debtors' businesses and operations are essential to the effective operation and reorganization of their businesses. Without the continued services of the Employees, the effective reorganization of the Debtors would not be possible.

26. Pursuant to Section 507(a)(4)(A) of the Bankruptcy Code, employee claims for “wages, salaries, or commissions, including vacation, severance, and sick leave pay” earned within 180 days before the Petition Date are afforded priority unsecured status to the extent of \$11,725 per employee. Similarly, Section 507(a)(5) of the Bankruptcy Code provides that employees’ claims for contributions to certain employee benefit plans are also afforded priority unsecured status to the extent of \$11,725 per employee covered by such plan, less any amount paid pursuant to Section 507(a)(4). Furthermore, Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code further provides that a Bankruptcy Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code.

27. The Debtors believe that all or substantially all of the pre-petition Employee Obligations constitute priority claims under Sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any of Debtors’ general unsecured obligations may be satisfied. Accordingly, the relief requested herein largely will affect only the timing of the payment of these priority obligations and should not prejudice the rights of general unsecured creditors or other parties in interest.

28. Moreover, with respect to Employment Tax Claims in particular, the payment of such taxes will not prejudice other creditors of Debtors, as the relevant taxing authorities generally would hold priority claims under Section 507(a)(8) of the Bankruptcy Code with respect to such obligations. The portion of the Employment Tax Claims withheld from an Employee’s wages on behalf of an applicable taxing authority and the other deductions are held

in trust by the Debtors. As such, funds held by the Debtors in respect of Employment Tax Claims are not property of the Debtors' estates under Section 541 of the Bankruptcy Code.

29. The Debtors submit that payment of the Employee Obligations is necessary and appropriate, and is authorized under Section 105(a) of the Bankruptcy Code pursuant to the "necessity of payment" doctrine, which "recognizes the existence of the 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." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989). Under Section 105, a court may "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). This doctrine is consistent with the paramount goal of Chapter 11 of "facilitating the continued operation and rehabilitation of the debtor." *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176.

30. Furthermore, Bankruptcy Rule 6003 permits the payment of pre-petition obligations within the first 21 days of a case where doing so is "necessary to avoid immediate and irreparable harm." Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern.

31. As stated herein, the relief requested in this Motion is necessary for the Debtors' businesses to continue to operate in the ordinary course and to maximize value for all creditors. The Employees are essential to the orderly and successful reorganization of the Debtors. They have substantial and valuable knowledge of the Debtors' business operations, and any deterioration in Employee morale and welfare at this critical time undoubtedly would adversely impact the Debtors, the value of their assets and businesses, and ultimately their ability to reorganize.

32. The Debtors further request that the Court authorize and direct the Banks to receive, process, and pay any and all checks, electronic fund transfers, and automatic payroll transfers drawn on the Debtors' Disbursement Accounts, to the extent such checks or transfers relate to any of the prepetition Employee Obligations. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such claims to replace any prepetition checks or electronic fund transfer requests that may have been dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 cases.

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

36. 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

33. 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 entry of an order granting the relief requested herein and such other and further relief as is just and proper.

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 DEBTORS (I) TO PAY CERTAIN
ACCRUED PRE-PETITION WAGES, EMPLOYEE BENEFITS, TAXES AND
RELATED CLAIMS, AND (II) FOR FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

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.*,¹ d/b/a The Cliffs Golf & Country Club,

Debtors.

CHAPTER 11

Case No. 12-01220

Joint Administration Pending

**ORDER AUTHORIZING DEBTORS (I) TO PAY CERTAIN
ACCRUED PRE-PETITION WAGES, EMPLOYEE BENEFITS, TAXES AND
RELATED CLAIMS, AND (II) FOR FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

Upon the motion [Docket Entry No. ____] (the “Motion”)² of the Debtors for an order authorizing, but not directing, the Debtors to: (i) pay pre-petition wages, salaries, employee benefits and other compensation, and (ii) for financial institutions to honor and process checks and transfers related to such obligations, 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

¹ 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).

² 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 are authorized, in the Debtors' sole discretion, to pay the Employee Obligations that have accrued but remain unpaid (including those amounts that remain unpaid as a result of dishonorment of checks due to the filing of these Bankruptcy Cases) as of the Petition Date to or for the benefit of their Employees, subject to the limitations set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, and subject to the terms of the DIP Budget and the Financing Orders.
3. The Banks are authorized and directed, when requested by the Debtors, to receive, process, honor and pay all checks presented for payment of, and to honor all funds transfer requests made by the Debtors related to Employee Obligations, whether such checks were presented or funds transfer requests were submitted prior to or after the Petition Date, provided that funds are available in the Debtors' accounts to cover such checks and funds transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or funds transfer as approved by this Order.
4. Nothing in the Motion or this Order, nor the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim is a claim for any Employee Obligations; or (e) an express or implied assumption of any contract.
5. No payments authorized herein will be made in violation of 503(c) of the Bankruptcy Code.
6. The requirements of Bankruptcy Rule 6004(a) are waived.

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

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

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

10. 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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