

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

Case No. 12-01220

**INTERIM ORDER UNDER BANKRUPTCY CODE SECTIONS 105(A) AND 366 (I)
PROHIBITING UTILITY PROVIDERS FROM ALTERING OR DISCONTINUING
SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II) APPROVING DEPOSIT
AS ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING
PROCEDURES FOR RESOLVING REQUESTS BY UTILITY
COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT
AND SETTING FURTHER HEARING**

The relief set forth on the following pages, for a total of 9 pages including this page is hereby **ORDERED**.

**FILED BY THE COURT
03/06/2012**



Entered: 03/06/2012

Chief US Bankruptcy Judge
District of South Carolina

**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

**INTERIM ORDER UNDER BANKRUPTCY CODE SECTIONS 105(a) AND 366 (I)
PROHIBITING UTILITY PROVIDERS FROM ALTERING OR DISCONTINUING
SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II) APPROVING DEPOSIT
AS ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING
PROCEDURES FOR RESOLVING REQUESTS BY UTILITY
COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT**

AND SETTING FURTHER HEARING

Upon the motion [Docket Entry No. 28] (the "Motion")² of the Debtors for an interim and final order, under sections 105(a) and 366 of the Bankruptcy Code (i) prohibiting the Utility Companies from altering or discontinuing service on account of unpaid prepetition invoices, (ii) approving the adequate assurance of postpetition payment to be provided to the Utility Companies through the adequate assurance arrangements set forth herein, and (iii) establishing

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.

the Additional Adequate Assurance Procedures for resolving any Additional Adequate Assurance Requests under Bankruptcy Code section 366(c); and upon consideration of 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

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is **GRANTED on an interim basis**, as set forth herein.
2. Absent further order of this Court, the Utility Companies, including any subsequently added Utility Companies, are prohibited from altering, refusing, or discontinuing service to or discriminating against the Debtors on account of unpaid prepetition invoices or due to the commencement of these Chapter 11 cases, or requiring the Debtors to pay a deposit or other security in connection with the provision of postpetition Utility Services, other than as set forth herein and in accordance with the Additional Adequate Assurance Procedures contained herein.
3. The Debtors shall pay as a deposit to each Utility Company an amount equal to the two-week average charge for Utility Services provided to the Debtors by each Utility Company.
4. The foregoing arrangements constitute adequate assurance of future payment to the Utility Companies in satisfaction of the requirements of Section 366 of the Bankruptcy Code.
5. The Additional Adequate Assurance Procedures are hereby approved as follows:
 - (a) In the event that a Utility Company maintains that the adequate assurance arrangements set forth herein are not satisfactory adequate assurance of

payment as contemplated by section 366(c)(2) of the Bankruptcy Code, the Utility Company must serve a request (an “Additional Adequate Assurance Request”) for adequate assurance on the Debtors via their counsel at the following addresses: McKenna Long & Aldridge, LLP, 303 Peachtree Street, NE, Atlanta, Georgia, 30308 (Attn: J. Michael Levensgood), so that it is actually received within thirty (30) days after the Petition Date, the “Additional Adequate Assurance Request Deadline”).

- (b) Any Additional Adequate Assurance Request must: (i) be made in writing, (ii) set forth the location for which Utility Services are provided, (iii) include a summary of the Debtors’ payment history relevant to the affected accounts, including any security deposit, (iv) set forth what the Utility Company would accept as satisfactory adequate assurance of payment, (v) explain why the requesting Utility Company believes the proposed adequate assurance arrangements set forth herein are not adequate assurance as future payment and (vi) provide a fax and electronic mail address to which the Debtors may respond to the Additional Adequate Assurance Request.
- (c) The Debtors shall have until twenty-five (25) days after the Additional Adequate Assurance Request Deadline (the “Resolution Period”) to negotiate and resolve the Additional Adequate Assurance Request. The Debtors and the applicable Utility Company also may agree to extend the Resolution Period.
- (d) Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company serving a timely Additional Adequate Assurance Request, and without further Order of the Court, if the Debtors, in their discretion, determine that the Additional Adequate Assurance Request is reasonable or if the parties negotiate alternate consensual provisions.
- (e) If the Debtors determine that an Additional Adequate Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Company during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurance of payment with respect to a particular Utility Company, pursuant to section 366(c)(3) of the Bankruptcy Code (the “Determination Hearing”).
- (f) Pending resolution of any such Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account of unpaid prepetition invoices or any objections to the Debtors’ adequate assurance arrangements set forth herein, or due to the commencement of these Chapter 11 cases

- (g) Any Utility Company that does not serve an Additional Adequate Assurance Request by the Additional Adequate Assurance Request Deadline shall be deemed to have received adequate assurance of payment that is satisfactory to such Utility Company within the meaning of section 366(c)(2) of the Bankruptcy Code.

6. The Debtors are authorized, in their sole discretion, to amend Exhibit A attached hereto to add or delete any Utility Company. The Debtors shall serve a copy of the Motion and this Order on such subsequently identified Utility Companies. Such Utility Companies shall then have thirty (30) days from the service of the Motion and the Order to make an Additional Adequate Assurance Request.

7. The inclusion or exclusion of any entity on or from Exhibit A or on or from any amended Exhibit A shall not constitute an admission that such entity is or is not a Utility Company within the meaning of Bankruptcy Code section 366. This Order specifically reserves the rights of the Debtors to argue that (a) any of the entities now or hereafter listed on Exhibit A are not “utilities” within the meaning of Bankruptcy Code section 366, and (b) any such entity is compelled by contractual obligation, state or local law, or otherwise, to continue to furnish services to the Debtors notwithstanding the Debtors’ filing for relief under Chapter 11 of the Bankruptcy Code.

8. In the event that any Utility Company, including a subsequently added Utility Company, files and/or serves an Additional Adequate Assurance Request after the Additional Adequate Assurance Request Deadline, or, if applicable, the deadline established in paragraph 6 above, such request shall be treated as a request under Bankruptcy Code section 366(c)(3) and shall be granted, if at all, only after the Utility Company making such request schedules such request for hearing, on notice, in accordance with the provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

9. The Debtors are authorized to pay on a timely basis in accordance with its prepetition practices all undisputed invoices in respect of postpetition Utility Services rendered by the Utility Companies to the Debtors.

10. A Utility Company shall be deemed to have adequate assurance of payment under Section 366 of the Bankruptcy Code unless and until (a) the Debtors, in their discretion, agree to an alternative assurance of payment with the Utility Company during the Resolution Period; or (b) this Court enters an order at the Final Hearing or any Determination Hearing requiring that additional adequate assurance of payment be provided.

11. A Final Hearing, if required, to consider the Motion and proposed final order is scheduled for **March 16, 2012, at 9:00 a.m. at the J. Bratton Davis United States Bankruptcy Courthouse, 1100 Laurel Street, Columbia, SC 29201-2423**. Any objections to the relief requested in the Motion must be filed with the Clerk of the Bankruptcy Court **on or before 12:00 p.m. EST on March 15, 2012**, and served upon and received by 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. If no objections are filed to the Motion, the Court may enter the final order without further notice or hearing.

12. The Debtors shall serve a copy of the Motion and this Order by United States mail, first class postage pre-paid, on (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; (f)

all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules; and (g) the Utility Companies identified on Exhibit A.

13. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

14. Nothing in this Order or the Motion shall be deemed to constitute the assumption or adoption of any agreement under Bankruptcy Code section 365.

15. The requirements of Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

16. 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:

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*Proposed Attorneys for Debtors and
Debtors in Possession*

EXHIBIT A

List of Utilities

| Utility Vendor Name | Type of Utility |
|----------------------------------|------------------------|
| Blue Ridge Electric Cooperative | Electricity |
| Progress Energy | Electricity |
| Duke Energy | Electricity |
| Fort Hill Natural Gas | Gas |
| Freeman Gas | Gas |
| Henderson Oil Company Inc. | Gas |
| Psnc Energy | Gas |
| Moore & Ballew Oil Co, Inc | Gas |
| Greenville Water System | Water |
| Blue Ridge Rural Water Co., Inc. | Water |
| City Of Asheville | Water |
| Six Mile Water District | Water |
| Town Of Salem | Water |
| Metropolitan Sewerage District | Sewer |
| GDS of Asheville | Trash |
| Oneal Sanitation | Trash |
| Republic Services | Trash |
| Visy Recycling Inc. | Trash |
| Waste Management | Trash |
| AT&T | Telephone |
| AT&T Mobility | Telephone |
| AT&T Pro-Cabs | Telephone |
| AT&T Long Distance | Telephone |
| Verizon Wireless | Telephone |
| Windstream Communications | Telephone |
| Charter Communications | Cable |
| DIRECTV | Satellite TV |
| Dish Network | Satellite TV |