

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

APPLICATION OF THE DEBTORS FOR ORDER AUTHORIZING RETENTION
OF BMC GROUP, INC. AS CLAIMS, NOTICING,
AND BALLOTING AGENT *NUNC PRO TUNC* TO THE PETITION DATE

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 file this application (the “Application”) for entry of an order (the “Order”), in substantially the form attached hereto as Exhibit C, authorizing and approving the retention of BMC Group, Inc. (“BMC”) as claims, noticing, and balloting agent for the Debtors *nunc pro tunc* to the Petition Date (as defined below). In support of this Application, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue

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).

of this proceeding and this Application in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested herein are 28 U.S.C. § 156(c), Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2081-1 of the District of South Carolina Local Bankruptcy Rules (the “Local Rules”).

BACKGROUND

3. On the date hereof (the “Petition Date”), the Debtors filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (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.

4. 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.

5. 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 with the Court.

RELIEF REQUESTED

6. Pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002 and Local Rule 2081-1, the Debtors hereby seek the entry of an order (a) appointing BMC to perform certain claims, noticing and other administrative functions in these Chapter 11 cases (in such role, the “Claims Agent”); and (b) authorizing the Debtors to compensate BMC for its services and reimburse BMC for any related expenses in accordance with applicable provisions of the agreement for services between BMC and the Debtors dated as of February 8, 2012 (the

“Services Agreement”), a copy of which is incorporated herein by reference and attached hereto as Exhibit B.

BASIS FOR RELIEF

7. The Debtors have approximately 8,000 creditors and other parties in interest, many of whom are expected to file proofs of claim. The Debtors believe that noticing, receiving, docketing and maintaining proofs of claim would impose heavy administrative and other burdens upon the Court and the Office of the Clerk of the United States Bankruptcy Court for the District of South Carolina (the “Clerk’s Office”). Upon information and belief, preparing and serving the notices on all such creditors and parties in interest and docketing and maintaining the large number of proofs of claim that may be filed in these cases would strain the resources of the Clerk’s Office.

8. Bankruptcy Rule 2002 describes certain notices that must be provided to creditors and other parties in interest in bankruptcy cases. Under Bankruptcy Rule 2002, the Court may direct that some person other than the Clerk of the Court provide notice of the various matters described therein. In addition, 28 U.S.C. § 156(c) expressly authorizes the use of non-court services for noticing:

Any court may utilize . . . services, either on or off the court’s premises, which pertain to the provision of notices . . . to parties in cases filed under the provisions of title 11 The utilization of such . . . services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c). Moreover, Local Rule 2081-1 requires that debtors with more than 500 creditors seek to retain a claims agent contemporaneously with the filing of the petition.

9. The number of the Debtors’ creditors makes it impracticable for the Clerk’s Office to undertake such tasks. The Debtors respectfully submit that the Debtors’ engagement of an independent third party to act as agent for the Court and to perform such

services is the most effective and efficient manner by which to perform, among others, the following tasks: (i) transmitting certain notices to creditors and parties in interest in these cases; (ii) receiving, docketing, maintaining, photocopying and transmitting proofs of claim in these cases; (iii) overseeing the distribution of solicitation materials; (iv) receiving, reviewing and tabulating ballots; and (v) performing other administrative tasks that the Debtors or the Clerk's Office may request under the terms of the Services Agreement, such as maintaining creditor lists and mailing notices.

10. Accordingly, the Debtors propose to engage BMC as the Claims Agent in these Chapter 11 cases.

Qualifications of BMC as Claims Agent

11. A copy of the Declaration of Tinamarie Feil, president of BMC, in support of this Application is attached hereto as Exhibit A (the "Feil Declaration").

12. As set forth in the Feil Declaration, BMC is one of the country's leading Chapter 11 administrators with experience in providing claims management and related services to Chapter 11 debtors in connection with the administration of Chapter 11 cases, solicitation and tabulation of votes to accept or reject plans of reorganization, and noticing to parties in interest in Chapter 11 cases. BMC also specializes and has expertise in serving as outside claims agent to the United States Bankruptcy Court with respect to all aspects of claims administration, including docketing and storage of claims, maintenance of claims registers, and related noticing services. BMC has provided identical or substantially similar services to other Chapter 11 debtors in other cases, including: *In re USA Commercial Mortgage Co., et al.*, No. BK-S-06-10725-LBR (Bankr. D. Nev. April 13, 2006); *In re VSS Enterprises*, No. BK-S-03-17939-LBR (Bankr. D. Nev. June 26, 2003); *In re Ziff-Davis Media, Inc.*, No. 08-10768 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2008); *In re SN Liquidation, Inc.*, No. 07-11666 (KG) (Bankr. D. Del. Nov. 8,

2007); *Sea Containers Ltd.*, No. 06-11156 (KJC) (Bankr. D. Del. Oct. 5, 2006); *In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006); *In re Musicland Holding Corp.*, No. 06-10064 (SMB) (Bankr. S.D.N.Y. Feb. 23, 2006); *In re Oxford Auto, Inc.*, No. 04-74377 (SWR) (Bankr. E.D. Mich. Jan. 13, 2005); *In re ATA Holdings Corp.*, No. 04-19866 (BHL) (Bankr. S.D. Ind. Oct. 29, 2004); *In re American Commercial Lines LLC*, No. 03-90305 (BHL) (Bankr. S.D. Ind. Feb. 26, 2003); *In re Conseco, Inc.*, No. 02-B-49672 (CAD) (Bankr. N.D. Ill. Jan. 14, 2003).

13. The Debtors believe that BMC's services in these cases will expedite service of notices, will streamline the claims administration process and will generally ease the burden on the Debtors to perform administrative tasks when their attention is best focused elsewhere. The Debtors believe that BMC is well qualified to provide such services.

The Debtors' Agreement with BMC

14. Pursuant to the Services Agreement, BMC may perform various noticing, claims and document-management services and provide assistance with such functions as plan solicitation, balloting and disbursement (collectively, the "Services"), if necessary, at the request of the Debtors and/or the Clerk's Office. In performing the Services, BMC may, for example, perform some of all of the following Services if requested by the Debtors:

- (a) prepare and serve required notices in these Chapter 11 cases, including:
 - (i) a notice of the commencement of these Chapter 11 cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code;
 - (ii) a notice of the claims bar date;
 - (iii) notices of objections to claims;
 - (iv) notices of hearings on a disclosure statement and confirmation of a plan of reorganization; and

- (v) such other miscellaneous notices as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these Chapter 11 cases;
- (b) receive, record and maintain copies of all proofs of claim and proofs of interest filed in these Chapter 11 cases;
- (c) maintain official claims registers in these cases by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each claim or interest asserted:
 - (i) the name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
 - (ii) the date the proof of claim or proof of interest was received by BMC or the Court;
 - (iii) the claim number assigned to the proof of claim or proof of interest; and
 - (iv) the asserted amount and classification of the claim;
- (d) receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e) and provide any noticing as required by such rule;
- (e) maintain an up-to-date mailing list for all entities who have filed proofs of claim or requests for notices in these Chapter 11 cases;
- (f) assist the Debtors and their counsel with the administrative management, reconciliation and resolution of claims;
- (g) print, mail and tabulate ballots for purposes of plan voting;
- (h) assist with the preparation and maintenance of the Debtors' schedules of assets and liabilities, statements of financial affairs and other master lists and databases of creditors, assets and liabilities,
- (i) assist with the production of reports, exhibits and schedules of information for use by the Debtors and their counsel or to be delivered to the Court, the Clerk's Office, the United States Trustee for the District of South Carolina (the "U.S. Trustee"), or third parties;
- (j) provide other technical and document-management services of a similar nature requested by the Debtors or the Clerk's office;
- (k) facilitate or perform distributions, as requested by the Debtors;
- (l) set up and maintain a public website, as requested by the Debtors; and

- (m) assist the Debtors with all analyses of avoidance actions pursuant to chapter 5 of the Bankruptcy Code.

BMC Compensation

15. The Debtors propose to compensate BMC at the rates set forth in the Services Agreement, subject to terms of the budget attached to the orders relating to debtor in possession financing and use of cash collateral (the "DIP Budget"). The Debtors and BMC (subject to the Court's authorization hereof) agree that BMC will bill the Debtors monthly for services rendered to the Debtors during the preceding month. The prices set forth in the Services Agreement are at least as favorable as those charged by BMC to other Chapter 11 debtors for similar services under similar circumstances.

16. Pursuant to Section 503(b)(1)(A) of the Bankruptcy Code, the Debtors hereby request that the fees to be charged by BMC together with its necessary and actual expenses be allowed as administrative expenses of the Debtors' estates. In an effort to reduce the administrative expenses related to BMC's retention, the Debtors request authorization to compensate BMC without formal fee applications or other filings with this Court.

17. The Debtors have provided retainer payments in the total amount of \$31,216.50 to BMC (the "Retainer"), against which BMC has applied \$31,216.50 in connection with the services performed by BMC pursuant to the Services Agreement. Accordingly, BMC currently holds a balance of \$0.00 as an advance payment for services to be rendered and expenses to be incurred in connection with its engagement by the Debtors. BMC has not received any other compensation from the Debtors.

18. If BMC's services are terminated, BMC shall perform its duties until a complete transition with the Clerk's Office or any successor claims/noticing/balloting agent occurs, in accordance with the amounts and procedures set forth in the Services Agreement.

19. BMC acknowledges that it will perform the services contemplated in the Services Agreement in the event that these Chapter 11 cases are converted to Chapter 7 cases, if claims agent services are necessary in the converted Chapter 7 cases. In such event, the Debtors request authority for BMC to continue to be paid by the estates in accordance with 28 U.S.C. §156(c) under the terms set forth herein.

20. BMC will comply with all requests of the Clerk's Office and will follow the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

DISINTERESTEDNESS AND NUNC PRO TUNC APPROVAL

21. The Debtors do not believe that BMC, as an administrative agent, is a "professional" whose retention is subject to approval under section 327 of the Bankruptcy Code or whose compensation is subject to approval of the Court under sections 330 and 331 of the Bankruptcy Code. As such, BMC has not completed a disinterestedness review under section 327(a) of the Bankruptcy Code.

22. Nevertheless, the Debtors are not aware of any relationship which would present a disqualifying conflict of interest. To the extent BMC discovers any such relationship, it will make appropriate disclosures to the Bankruptcy Court. Accordingly, the Debtors believe that BMC is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, in that BMC and its professional personnel:

- a. are not creditors, equity security holders or insiders of the Debtors;
- b. are not and were not, within two years before the date of the filing of the Debtors' Chapter 11 petitions, directors, officers or employees of the Debtors; and
- c. do not have an interest materially adverse to the interests of the Debtors' estates or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors.

23. The Debtors request approval of the employment of BMC *nunc pro tunc* to the Petition Date. Such relief is warranted by the extraordinary circumstances presented by these cases. "Time pressure to begin service" and absence of prejudice are factors favoring *nunc pro tunc* retention. See *Matter of Arkansas Co.*, 798 F.2d 645, 650 (3d Cir. 1986); see also *In re Indian River Homes, Inc.*, 108 B.R. 46, 52 (D. Del. 1989), *app. dismissed*, 909 F.2d 1406 (3d Cir. 1990). The complexity, intense activity and speed that have characterized these cases have necessitated that the Debtors, BMC and the Debtors' other professionals focus their immediate attention on time-sensitive matters, and promptly devote substantial resources to the affairs of the Debtors pending submission and approval of this Application.

24. For the foregoing reasons, the Debtors believe that the retention of BMC as Claims Agent, *nunc pro tunc* to the Petition Date, is appropriate and in the best interest of the Debtors, their estates, creditors, equity security holders and other parties in interest.

NOTICE

25. 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 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.

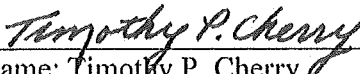
NO PRIOR APPLICATION

26. No prior application for the relief requested herein has been made to this Court or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter the proposed Order, in substantially the form attached hereto as Exhibit C, authorizing and approving the retention of BMC as Claims Agent and granting such other and further relief as the Court deems appropriate.

[signature follows]

Respectfully submitted this 28th day of February, 2012.



Name: Timothy P. Cherry
Title: Interim President and Chief Executive
Officer of the Debtors

EXHIBIT A

TINAMARIE FEIL DECLARATION

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

DECLARATION OF TINAMARIE FEIL IN SUPPORT OF THE
DEBTORS' APPLICATION FOR ORDER AUTHORIZING RETENTION OF
BMC GROUP, INC. AS CLAIMS, NOTICING, AND
BALLOTING AGENT *NUNC PRO TUNC* TO THE PETITION DATE

Tinamarie Feil, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the President of BMC Group, Inc. ("BMC"), a firm whose services include a specialization in the administration of large bankruptcy cases, with offices located at 600 First Avenue, Suite 300, Seattle, WA 98104.

2. I submit this declaration (the "Declaration") in support of the application (the "Application")² of 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"), for entry of an order authorizing and approving the retention of BMC as claims,

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 used but not otherwise defined herein shall have the meanings ascribed to them in the Application.

noticing, and balloting agent for the Debtors, *nunc pro tunc* to the Petition Date, pursuant to the terms and conditions set forth in the Application and the Services Agreement attached to the Application as Exhibit B (the “Services Agreement”). Except as otherwise noted, I have personal knowledge of the matters set forth herein.³

3. The services BMC proposes to render as Claims Agent are described in the Application and the Services Agreement, which are incorporated herein by reference.

4. BMC is one of the country’s leading Chapter 11 administrators with experience in providing claims management and related services to Chapter 11 debtors in connection with the administration of a Chapter 11 case, solicitation and tabulation of votes to accept or reject plans of reorganization, and noticing to parties in interest in Chapter 11 cases. BMC also specializes and has expertise in serving as outside claims agent to the United States Bankruptcy Court with respect to all aspects of claims administration, including docketing and storage of claims, maintenance of claims registers, and related noticing services. BMC has provided identical or substantially similar services to other Chapter 11 debtors in other cases, including: *In re USA Commercial Mortgage Co., et al.*, No. BK-S-06-10725-LBR (Bankr. D. Nev. April 13, 2006); *In re VSS Enterprises*, No. BK-S-03-17939-LBR (Bankr. D. Nev. June 26, 2003); *In re Alternative Distribution Systems, Inc.*, Case No. 09-13099(PJW), *In re NV Broadcasting, LLC*, Case No. 09-12473(KG), and *In re Fleming Companies, Inc.*, Case No. 03-10945(MFW). Accordingly, I believe BMC is well-qualified to act as Claims Agent in these cases.

³ Certain of the disclosures herein may relate to matters within the knowledge of other associates at BMC and are based on information provided by them.

5. The compensation arrangement provided for in the Services Agreement, including BMC's hourly rates, is consistent with and typical of arrangements entered into by BMC and other similar firms with respect to rendering similar services in other Chapter 11 cases.

6. In connection with the reimbursement of actual and necessary expenses, it is BMC's policy to charge its clients for direct expenses incurred in connection with providing client services. These expenses and charges include postage, long distance telephone charges, hand delivery and other delivery charges, travel expenses, computerized research, transcription costs, and third-party photocopying charges.

7. The Services Agreement provides that the Debtors will pay BMC's fees and expenses upon the submission of monthly invoices by BMC that summarize, in reasonable detail, the services for which compensation is sought.

8. In connection with its appointment as Claims Agent, BMC represents, among other things, that:

- (i) BMC will not consider itself employed by the United States and shall not seek any compensation from the United States in its capacity as Claims Agent in these Chapter 11 cases;
- (ii) By accepting appointment in these Chapter 11 cases, BMC waives any rights to receive compensation from the United States;
- (iii) In its capacity as the Claims Agent in these Chapter 11 cases, BMC will not be an agent of the United States and will not act on behalf of the United States;
- (iv) In its capacity as the Claims Agent in these Chapter 11 cases, BMC will not misrepresent any fact to any person; and
- (v) BMC will not employ any past or present employees of the Debtors in connection with its work as the Claims Agent in these Chapter 11 cases.

9. As set forth in the Application, the Debtors do not believe that BMC, as an administrative agent, is a "professional" whose retention is subject to approval under section 327 of the Bankruptcy Code or whose compensation is subject to approval of the Court under

sections 330 and 331 of the Bankruptcy Code. As such, BMC has not completed a disinterestedness review under section 327(a) of the Bankruptcy Code.

10. Nevertheless, to the best of my knowledge, and except as disclosed herein, and based solely upon information provided to me by the Debtors, neither BMC nor any employee thereof, has any connection with the Debtors, the Debtors' estates, their creditors or any other party in interest herein. BMC may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which BMC serves or has served in a neutral capacity as noticing, claims and balloting agent for another Chapter 11 debtor. To the best of my knowledge, such relationships are completely unrelated to these Chapter 11 cases. In addition, BMC personnel may have relationships with some of the Debtors' creditors or other parties in interest. However, to the best of my knowledge, such relationships, to the extent they exist, are of a personal financial nature and completely unrelated to these Chapter 11 cases. BMC has and will continue to represent clients in matters unrelated to these Chapter 11 cases. In addition, BMC has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals and other parties in interest that may be involved in the Debtors' cases in matters unrelated to these cases. To the best of my knowledge and except as disclosed herein, neither BMC nor any employees thereof, represents any interest adverse to the Debtors' estates with respect to any matter upon which BMC is to be engaged. To the extent BMC discovers any such relationship, it will make appropriate disclosures to the Bankruptcy Court in a supplemental declaration. Based on the foregoing, I believe that BMC is a "disinterested person" as that term is defined in 11 U.S.C. § 101(14).

11. BMC has not been retained to assist any entity or person other than the Debtors on matters relating to, or in connection with, these Chapter 11 cases. If BMC's proposed retention is approved by this Court, BMC will not accept any engagement or perform

any service for any entity or person other than the Debtors in these Chapter 11 cases without prior approval by the Debtors or the Court. BMC may, however, provide professional services to entities or persons that may be creditors or parties in interest in these Chapter 11 cases which services do not relate to, or have any direct connection with, the Debtors or these Chapter 11 cases.

12. The Debtors have provided retainer payments in the total amount of \$31,216.50 to BMC, against which BMC has applied \$31,216.50 in connection with the services performed by BMC pursuant to the Services Agreement. Accordingly, BMC currently holds a balance of \$0.00 as an advance payment for services to be rendered and expenses to be incurred in connection with its engagement by the Debtors. BMC has not received any other compensation from the Debtors.

13. Except with respect to its partners, affiliates and employees, there is no agreement or understanding between BMC and any other party or entity for sharing compensation received or to be received for services rendered by BMC in connection with these Chapter 11 cases.

14. BMC will comply with all requests of the Clerk's Office and follow the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

I declare under penalty of perjury of the United States that the foregoing is true and correct.

Executed this 28th day of February, 2012.



Tinamarie Feil
President, Client Services

EXHIBIT B

BMC SERVICES AGREEMENT

AGREEMENT FOR SERVICES

*CCHC Holdings, LLC,
The Cliffs Club &
Hospitality Group, Inc.
And its
subsidiaries*

This Agreement dated as of February 2, 2012, is entered between *JHW* ("Customer") and BMC Group, Inc. ("BMC"). The services rendered by BMC pursuant to this Agreement will commence on the date first set forth above and will continue until the Agreement is terminated as set forth below. *And its subsidiaries*

TERMS AND CONDITIONS

I. SERVICES

In accordance with the terms and conditions contained in this Agreement and in the Fee Schedule annexed hereto, BMC agrees to provide services as follows: (a) assisting the Customer, Counsel and Office of the Clerk with noticing and claims docketing and (b) *assisting Customer with the compilation, administration, evaluation and production of* documents and information necessary to support a restructuring effort. At Customer's, Counsel's or the Clerk's Office's direction, as the case may be, and in accordance with any court orders or rules in the bankruptcy case(s) (including any court order authorizing BMC's engagement), BMC will (1) prepare and serve those notices required in the bankruptcy cases; (2) receive, record and maintain copies of all proofs of claim and proofs of interest filed in the bankruptcy cases; (3) create and maintain the official claims register(s); (4) receive and record all transfers of claims pursuant to Bankruptcy Rule 3001(e); (5) maintain an up-to-date mailing list for all entities who have filed proofs of claim and/or requests for notices in the bankruptcy cases; (6) assist Customer and Counsel *with the administrative management, reconciliation and resolution of claims;* (7) print, mail and tabulate ballots for purposes of plan voting; (8) assist with the preparation and maintenance of Customer's Schedules of Assets and Liabilities, Statements of Financial Affairs and other master lists and databases of creditors, assets and liabilities; (9) assist with the production of reports, exhibits and schedules of information or use by *the Customer, Counsel or to be delivered the Court, the Clerk's Office, the U.S. Trustee or* third parties; and (10) provide other technical and document management services of a similar nature requested by Customer or the Clerk's office; (11) facilitate or perform distributions, and (12) assist Customer with all analyses and/or collections of avoidance actions pursuant to Chapter 5 of the United States Bankruptcy Code.

II. TECHNOLOGY SUPPORT

BMC agrees to provide computer software support and to educate and train Customer in the use of the support software, provide BMC's standard reports as well as consulting and *programming support for Customer requested reports, program modifications, database* modification, and/or other features.

III. PRICES, CHARGES AND PAYMENT

- A. BMC agrees to charge, and Customer agrees to pay, BMC's standard prices for its services, expenses and supplies at the rates or prices in effect on the day such services and/or supplies are provided to the Customer, in accordance with the Fee Schedule annexed hereto.
- B. BMC will be compensated at its stated rates for services rendered and reimbursed for necessarily incurred expenses.

C. At the commencement of the Agreement, Customer will provide BMC with an initial advance payment retainer of \$10,000 ("Retainer"). The Retainer or any portion thereof may be applied as set forth in Paragraph III.F & G below to payment for necessarily incurred expenses. In addition, the Retainer will be applied to BMC's final bill for services and expenses rendered or incurred on behalf of Customer. After application to the final bill, the unapplied portion of the Retainer (if any) shall be promptly refunded to the Customer.

D. Wire transfer information for the transmission of payments is as follows:

Bank Name -	Wells Fargo Bank
Address -	933 3 rd Avenue, Seattle, WA 98104
ABA/Routing # -	121000248
Account Name -	BMC Group, Inc.
Account # -	4123012122

E. BMC raises its rates from time to time and generally does so each January.

F. Customer agrees to pay BMC for any necessarily incurred out-of-pocket reasonable expenses for transportation, lodging, meals and related items.

G. In connection with noticing services, upon BMC's request, Customer agrees to prepay BMC estimated postage amounts with respect to each notice or shall authorize BMC to cause the courier's charges (such as UPS or FedEx) to be stated to Customer's own account with such courier.

H. BMC agrees to invoice Customer for fees and expenses and Customer agrees that the amount invoiced is due and payable upon its receipt of the invoice. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, Customer further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) interest on the amount unpaid, accruing from the invoice date. In the case of a dispute in the invoice amount, notice shall be given to BMC within twenty (20) days of receipt of the invoice by Customer. Interest shall not accrue on any amounts in dispute. The balance of the invoice amount is due and payable in the normal course.

IV. WARRANTY

The BMC warranty under the Agreement shall be limited to the re-running, at its expense, of any inaccurate reports, provided that such inaccuracies were caused solely as a result of BMC performance hereunder and provided further that BMC shall receive written notice of such inaccuracies within thirty (30) days of delivery of such report. If said notice is not made to BMC within the prescribed time limit Customer is liable for all charges. Customer agrees that the foregoing constitutes the exclusive remedy available with respect to inaccurate reports.

V. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other similar proprietary materials furnished by BMC pursuant to this Agreement and/or developed during the course of this Agreement by BMC are the sole property of BMC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, sub-routines, procedural manuals, and documentation. Customer agrees not to copy or permit others to copy for unauthorized use the source code from the support software or any other programs or similar proprietary materials furnished pursuant to this Agreement.

- B. Customer further agrees that any ideas, concepts, know-how or techniques relating to data processing or BMC's performance of its services developed during the course of its Agreement by BMC shall be exclusive property of BMC.
- C. Upon Customer's request at any time or times while this Agreement is in effect, BMC shall *immediately deliver to Customer at Customer's sole expense, any or all of the non-proprietary data, information and records held or controlled by BMC pursuant to this Agreement, in the form requested by Customer.* Any information, data and records, in whatever form existing, whether provided to BMC by Customer or developed by BMC for Customer under this Agreement, may be retained by BMC until all amounts due under this Agreement are paid in full, it being understood that neither party asserts rights of ownership in the official claims register or materials filed with BMC as an agent of the court.
- D. Customer shall remain liable for all charges imposed under this Agreement as a result of data or physical media maintained by BMC. BMC shall dispose of the data and media in the manner requested by Customer. Customer agrees to pay BMC for reasonable expenses incurred as a result of the disposition of the data or media. After giving Customer thirty (30) days advance notice, BMC reserves the right to dispose of data or media maintained by BMC for Customer if Customer has not utilized the services provided herein for a period of at least ninety (90) days or if Customer has not paid all charges due to BMC.

VI. NON-SOLICITATION

Customer agrees that it shall not, directly or indirectly, solicit for employment, employ or otherwise retain staff of BMC during the term of this Agreement, nor for a period of twelve (12) months after termination of this Agreement unless mutually agreed upon by both parties.

VII. CONFIDENTIALITY

- A. BMC agrees to, and shall cause its servants, agents, employees, licensees, and subcontractors to, safeguard and keep confidential all data, records, information and communications of any sort or form, regardless of whether written, oral, visual or *otherwise recorded or transmitted, with respect to Customer, but excluding such data, records, information and communications that exist in the public domain by reason other than a breach of BMC's obligations under this Section VII "Confidentiality" (the "Confidential Information").* BMC will use the Confidential Information only for the benefit of Customer in connection with the provision of services under this Agreement. Customer agrees to, and will cause its servants, agents, employees, licensees, and subcontractors to, *keep all information with respect to BMC's system, procedures and software confidential;* provided, however, that if either party is required to produce any such information by order of any governmental agency or other regulatory body, it may, upon not less than five business days' written notice to the other party, release the required information. The obligations set forth in this paragraph shall survive termination of this Agreement.

VIII. TERMINATION

- A. This Agreement shall remain in force until terminated by Customer, or, by BMC upon thirty (30) days' prior written notice to the other party.
- B. *In the event that this contract is terminated, regardless of the reason for such termination, BMC shall cooperate with Customer to orderly transfer to Customer or its designee (or*

destroy, at Customer's direction) data, records and information in its possession or control and to effect an orderly transition of record-keeping functions. BMC shall provide all necessary staff, services and assistance required for an orderly transfer and transition. Customer agrees to pay for such services in accordance with BMC's then existing prices for such services.

IX. SYSTEM IMPROVEMENTS

BMC's policy is to provide continuous improvements in the quality of service to the Customer. BMC, therefore, reserves the right to make changes in operations procedures, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the BMC data center serving the Customer.

X. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

Except with respect to breaches under Section VII "Confidentiality" above, Customer shall indemnify and hold BMC, its officers, employees and agents harmless against any losses, claims, damages, judgments, liabilities and expense (including reasonable counsel fees and expenses) resulting from action taken or permitted by BMC in good faith with due care and without negligence in reliance upon instructions or orders received from Customer as to anything arising in connection with its performance under this Agreement. Except with respect to breaches under Section VII "Confidentiality" above, BMC shall be without liability to Customer with respect to any performance or non-performance, in accordance with the terms of this Agreement or instructions properly received pursuant hereto, if done in good faith and without negligence or willful or wanton misconduct. Except with respect to breaches under Section VII "Confidentiality" above, in no event shall liability to Customer for any losses or damages, whether direct or indirect, arising out of this Agreement exceed the total amount billed or billable to Customer for the portion of the particular work which gave rise to the loss or damage. Except with respect to breaches under Section VII "Confidentiality", in no event shall BMC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

XI. NOTICES

All notices in connection with this Agreement shall be given or made upon the respective parties in writing by facsimile or overnight courier and shall be deemed as given, if by facsimile, on the business day immediately following confirmed transmission, or if by courier, on the day it is delivered by such courier to the appropriate address set forth below:

BMC Group, Inc.
Attn: Tinamarie Feil
600 1st Avenue
Suite 300
Seattle, WA 98104

Telephone 206.516.3300
Fax 206.516.3304

Customer CCHC Holdings, Inc.

The Cliffs Club & Hospitality

Group, Inc. and its subsidiaries

3598 Hwy 11

Travelers Rest, SC 29690

Telephone: 864-371-1000

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

XII. APPLICABLE LAW

This agreement shall be construed in accordance with the laws of the State of Washington and may be modified only by a written instrument duly executed by an authorized representative of Customer and an officer of BMC.

XIII. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Agreement may not be modified or altered by written instrument duly executed by both parties. Customer represents that it has the authority to enter into this Agreement, may be subject to bankruptcy court approval, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. In the event of any conflict between a term of this Agreement and any order of the court exercising jurisdiction over the Customer bankruptcy cases, the term of the order shall govern.

XIV. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned by BMC to a wholly owned subsidiary of BMC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

BMC Group, Inc. By: _____ Name: Tinamarie Feil Title: President, Client Services Date: February __, 2012	CCMG Holdings Inc. The Clack Club Hospitality Group By: <u>Timothy P. Cherry</u> Name: <u>Timothy P. Cherry</u> Title: <u>as authorized officer</u> Date: February <u>28</u> , 2012
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Inc. and its subsidiaries

XII. APPLICABLE LAW

This agreement shall be construed in accordance with the laws of the State of Washington and may be modified only by a written instrument duly executed by an authorized representative of Customer and an officer of BMC.

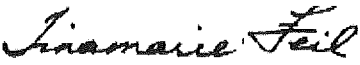
XIII. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Agreement may not be modified or altered by written instrument duly executed by both parties. Customer represents that it has the authority to enter into this Agreement, may be subject to bankruptcy court approval, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. In the event of any conflict between a term of this Agreement and any order of the court exercising jurisdiction over the Customer bankruptcy cases, the term of the order shall govern.

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This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned by BMC to a wholly owned subsidiary of BMC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

BMC Group, Inc. By:  Name: Tinamarie Feil Title: President, Client Services Date: February 7, 2012	By: _____ Name: _____ Title: _____ Date: February __, 2012
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Bankruptcy & Restructuring

Claims Management and b-Linx Claims Management Platform

Claim Receipt, Process & Docketing	\$2.50 per claim (no per hour charges)
Claim Imaging including b-Linx Association	\$0.12 per image
b-Linx Access and Maintenance	\$0.07 per record/mo (\$250 min/\$850 max, no per user fee)
Schedules/Statements Preparation	at applicable Case Management rates
Claim Analysis, Reconciliation, Objection Support	at applicable Case Management rates
Claims Order Review and Updates	at applicable Case Management rates

Print Mail and Noticing Services

Create/Maintain Noticing Database & Service Lists	at applicable Case Management rates
Production Setup	\$0 - \$25 per file
Copy/Print	\$0.10 per image (discounts applied for high volume)
Envelope and Address Printing/Labeling	\$0.08 standard / catalogue or custom varies
Finishing (Fold or Collate, Insertion, Seal, Mail)	\$0.05 per document
Postage	at cost (includes optimization recommendations)
Certified Electronic Noticing Service	\$40 per 1000 (no per page charge)
Certified Fax Noticing Service	\$0.15 per image
Processing of Undeliverables	\$0.25 each + cost of re-mails as applicable
Legal Notice Experts/Publication	Quote

Document and Information Management

Document Imaging	\$0.12 per image
Live Operator Call Center	\$45 per hour
Custom Website Hosting	Set up, plus \$250 per month
Secure Virtual Data Room	Set up + \$0.15/page per month
Physical Document Storage	\$1.45 per box/month
Document Analysis	at applicable Case Management rates

Solicitation

Solicitation Materials Print and Notification	at applicable Print Mail and Noticing rates
Ballot Receipt, Processing, Tabulation	at applicable Case Management rates
Solicitation to Public Securities Holders	at applicable Case Management rates

Distribution

Distribution Consulting	at applicable Case Management rates
Check Issuance or Tax Reporting (1099, W-2)	\$1.50 each
Issuance Stock, Notes, Warrants	\$1.25 each
Registrar of New Issue(s)	Quote

Case Management

Data Entry/Administrative Support	\$25/ \$45 - \$65 per hour
Analysts	\$80 - \$110 per hour
Consultants	\$110 - \$145 per hour
Project Managers	\$175 - \$250 per hour
Director/Principal	\$250 - \$275 per hour (Average Hourly Rate < \$125)

EXHIBIT C

PROPOSED ORDER

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

Case No. 12-01220

**ORDER AUTHORIZING RETENTION OF BMC GROUP, INC. AS CLAIMS,
NOTICING, AND BALLOTING
AGENT *NUNC PRO TUNC* TO THE PETITION DATE**

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 RETENTION OF BMC GROUP, INC. AS CLAIMS,
NOTICING, AND BALLOTING
AGENT NUNC PRO TUNC TO THE PETITION DATE

Upon consideration of the application [Docket Entry No. ____] (the "Application")² of the above-captioned debtors (the "Debtors") for entry of an order authorizing and approving the retention of BMC Group, Inc. ("BMC") as claims, noticing, and balloting agent for the Debtors *nunc pro tunc* to the Petition Date; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon consideration of the Cherry Declaration and the Declaration of Tinamarie Feil in support of the Application; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Application is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Application and opportunity for objection having

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 used but not defined herein shall have the same meanings ascribed to them in the Application.

been given; and it appearing that no other notice need be given; and the Court having determined that the relief sought in the Application is in the best interests of the Debtors, their creditors, and all parties in interest; and after due deliberation and sufficient cause therefore, it is hereby:

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Application is granted.
2. In accordance with 28 U.S.C. § 156(c), the Debtors are authorized and empowered to employ BMC as the claims, noticing and balloting agent (the "Claims Agent") in these Chapter 11 cases according to the terms of the Services Agreement entered into between the Debtors and BMC attached to the Application as Exhibit B.
3. The retention of BMC as Claims Agent by the Debtors shall be *nunc pro tunc* to the Petition Date.
4. The Debtors are authorized to pay and reimburse BMC according to the terms of the Services Agreement, subject to terms of the DIP Budget. BMC, as an administrative agent, is not a "professional" whose retention is subject to approval under section 327 of the Bankruptcy Code or whose compensation is subject to approval of the Court under sections 330 and 331 of the Bankruptcy Code. Accordingly, no submission or approval of any formal fee application is required for any payment to BMC pursuant to the Services Agreement.
5. In the event that these Chapter 11 cases are converted to Chapter 7 cases, and if claims agent services are necessary in the converted Chapter 7 cases, BMC shall continue to be authorized to perform services to, and be paid by, the estates in accordance with 28 U.S.C. §156(c) under the terms approved herein until BMC's services are terminated.
6. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

7. The Debtors shall, within three (3) business days hereof, serve a copy of this Order on all parties that received notice of the Application, as well as all parties that have appeared in these cases and requested notice since the Debtors filed the Application, and file a certificate of service evidencing such service.

AND IT IS SO ORDERED.

Prepared and presented by:

/s/ Däna Wilkinson

Däna Wilkinson
District Court I.D. No. 4663
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864.574.7944 (Telephone)
864.574.7531 (Facsimile)
danawilkinson@danawilkinsonlaw.com

-and-

/s/ J. Michael Levengood

Gary W. Marsh
Georgia Bar No. 471290
J. Michael Levengood
Georgia Bar No. 447934
Bryan E. Bates
Georgia Bar No. 140856
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*Proposed Attorneys for Debtors and
Debtors in Possession*