

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

**MOTION FOR ORDER UNDER 11 U.S.C. §§ 105(a) AND 366 (I)
PROHIBITING UTILITY COMPANIES 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**

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 move for entry of an order, under section 366 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”), (i) prohibiting the Utility Companies (as defined below) from altering or discontinuing service on account of prepetition invoices, (ii) approving the adequate assurance of postpetition payment to be provided to the Utility Companies through the establishment of the adequate assurance arrangements set forth herein, and (iii) establishing procedures for resolving any subsequent

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).

requests by the Utility Companies for additional adequate assurance of payment (the "Motion"). In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of Timothy P. Cherry in Support of First Day Motions (the "Cherry Declaration"). In further support of the Motion, the Debtors, by and through its undersigned counsel, respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these Chapter 11 cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code.

BACKGROUND

2. On the date hereof (the "Petition Date"), the Debtors filed their voluntary petitions for relief under the Bankruptcy Code. The Debtors are authorized to operate their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. 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.

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 Cherry Declaration filed with the Court.

RELIEF REQUESTED

5. In connection with the operation of their businesses, the Debtors obtain services ("Utility Services") from various providers of Utility Services (each a "Utility Company" and,

collectively, the “Utility Companies”).² By this Motion, the Debtors seek entry of interim and final orders: (a) prohibiting the Utility Companies from altering or discontinuing service on account of unpaid prepetition invoices, (b) approving the adequate assurance arrangements set forth herein as providing Utilities Companies with “adequate assurance of payment” under section 366 of the Bankruptcy Code and deeming all utilities entitled to such assurance of payment under section 366 of the Bankruptcy Code to have received adequate assurance of payment pursuant to section 366; and (c) approving the Additional Adequate Assurance Procedures (as defined below) set forth below as the method for resolving disputes regarding adequate assurance of payment. The Debtors request the immediate entry of an interim order, to be followed by a final hearing (the “Final Hearing”) on notice to the Utility Companies identified on Exhibit A to be held within twenty-five (25) days of the Petition Date, and entry of a final order at the conclusion of that hearing.

BASIS FOR RELIEF

6. As of the Petition Date, fifteen (15) principal Utility Companies provide Utility Services to the Debtors at their facilities: (i) for electricity, Blue Ridge Electric Cooperative, Progress Energy, and Duke Energy; (ii) for natural gas, Fort Hill Natural Gas, Freeman Gas, Henderson Oil Company Inc., and Psnc Energy; (iii) for water, Greenville Water System, Blue

² The Utility Companies known and identified by the Debtors to date are listed on Exhibit A hereto. While the Debtors have used their best efforts to list their Utility Companies in Exhibit A, it is possible that certain Utility Companies may have been inadvertently omitted from the list. Accordingly, the Debtors reserve the right, under the terms and conditions of this Motion and without further order of the Court, to amend Exhibit A to add any Utility Company that was omitted therefrom and to request that the relief requested herein apply to any and all such entities as well. In addition, the Debtors reserve the right to argue that (a) any of the entities now or hereafter listed in Exhibit A are not “utilities” within the meaning of section 366 of the Bankruptcy Code, 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.

Ridge Rural Water Co., Inc., City Of Asheville, Six Mile Water District, and Town Of Salem; and (iv) for sewer, Metropolitan Sewerage District.

7. Prior to the Petition Date, the Debtors had a consistent history of making timely payment for their Utility Services. However, due to the timing of the filing of these Chapter 11 cases in relationship to the Utility Companies' billing cycles, and the Debtors' financial situation leading to the filing of these Chapter 11 cases, certain utility costs may have been invoiced to the Debtors for which payment is currently due but has not been paid. In addition, the Debtors may have incurred utility costs for services provided since the end of the last billing cycle that have not been invoiced to the Debtors.

8. The services provided by the Utility Companies are crucial to the continued operations of the Debtors. If the Utility Companies refuse or discontinue service, even for a brief period, the Debtors could be forced to cease operations.

9. By this Motion, the Debtors preserve the protections that the Utility Companies have under the Bankruptcy Code, while affording the Debtors an opportunity to provide and negotiate adequate protection without facing the threat of imminent termination of Utility Services. In particular, the Debtors request approval of certain procedures that balance the protections afforded the Utility Companies under section 366 of the Bankruptcy Code and the Debtors' need for continuous and uninterrupted Utility Services.

A. The Proposed Adequate Assurance

10. The Debtors intend to pay all postpetition obligations owed to the Utility Companies in a timely manner using operating revenue and in accordance with the DIP Budget (as defined in the Cherry Declaration). Moreover, the Debtors expect that availability under its proposed debtor-in-possession financing facility will be more than sufficient to pay such postpetition utility obligations, in accordance with the DIP Budget.

11. The Debtors respectfully submit that none of the Utility Companies requires a deposit for the provision of Utility Services to the Debtors in the postpetition period of these Chapter 11 cases, in light of the fact that the Debtors have paid all amounts due and owing to the Utility Companies in the ordinary course of prepetition business and invoicing, and the Debtors anticipate that they will timely pay all amounts that come due to the Utility Companies during the postpetition period of these Chapter 11 cases, in accordance with the DIP Budget. Nevertheless, the Debtors propose to pay as a deposit to each Utility Company an amount equal to the two-week average charge for Utility Services provided by each Utility Company.

12. The Debtors submit that the foregoing constitutes adequate assurance of future payment to the Utility Companies to satisfy the requirements of Section 366 of the Bankruptcy Code.

B. Additional Adequate Assurance Request Procedures

13. Notwithstanding the adequate assurance proposed herein, the Debtors anticipate that certain Utility Companies may not find the adequate assurances set forth herein, coupled with the Debtors' ability to pay for future utility services in the ordinary course of business, "satisfactory" and, thus, may request additional adequate assurance of payment pursuant to section 366(c)(2) of the Bankruptcy Code. Accordingly, the Debtors propose that such requests be addressed pursuant to the following procedures (the "Additional Adequate Assurance Procedures");

- (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.

14. The Debtors seek authority, in their sole discretion, to amend Exhibit A attached hereto to add or delete any Utility Company. To the extent that the Debtors subsequently

identify additional providers of Utility Services, the Debtors propose to have the terms of the order apply to any such subsequently identified Utility Company. The Debtors will serve a copy of this Motion and the order approving the Motion on such subsequently identified Utility Company, along with an amended Exhibit A listing such Utility Company, such Utility Company would then have thirty (30) days from service of the Motion and order to make an Additional Adequate Assurance Request.

15. 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 subsequent deadline as proposed above, such request shall be treated as a request under section 366(c)(3) of the Bankruptcy Code 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.

16. The Debtors maintain that the relief requested herein strikes a fair balance between the rights of the Utility Companies and the rights of the Debtors under the Bankruptcy Code and the need for the Debtors to continue to receive, for the benefit of their estates, the Utility Services upon which their businesses and operations depend. The Debtors do not believe that the Utility Companies will be prejudiced by the relief proposed herein, the uninterrupted continuation of the Utility Services, and the approval of the Additional Adequate Assurance Procedures.

17. The Debtors request a Final Hearing on this Motion to be held within twenty-five (25) days of the Petition Date to ensure that, if a Utility Company argues it can unilaterally refuse service to the Debtors on the thirty-first (31st) day after the Petition Date, the Debtors will

have the opportunity, to the extent necessary, to request that the Court make such modifications to the Additional Adequate Assurance Procedures in time to avoid any potential termination of Utility Service.

APPLICABLE AUTHORITY

18. Section 366(a) of the Bankruptcy Code provides:

Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the Debtors solely on the basis of the commencement of a case under this title or that a debt owed by the Debtors to such utility for service rendered before the order for relief was not paid when due.

11 U.S.C. § 366(a).

19. The policy underlying section 366 of the Bankruptcy Code is to protect Debtors from the termination of utility service upon the filing of a bankruptcy case, while at the same time providing utility companies with adequate assurance that the Debtors will pay for postpetition services. *See* H.R. Rep. No. 95-595, at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306, *see also Jones v. Boston Gas Co.*, 369 B.R. 745, 748 (BAP 1st Cir. 2007) (“The purpose of § 366 is to prevent the threat of termination from being used to collect pre-petition debts while not forcing the utility to provide services for which it may never be paid.”). As set forth herein, this policy is furthered by the relief requested through this Motion.

20. Pursuant to section 366(c)(2) of the Bankruptcy Code, a utility is permitted to alter, refuse, or discontinue utility service, if the utility does not receive “during the 30-day period beginning on the date of the filing of the petition . . . adequate assurance of payment for utility service that is satisfactory to the utility.” 11 U.S.C. § 366(c)(2). While the form of adequate assurance of payment may be limited under subsection 366(c) to the types of security enumerated in subsection 366(c)(1)(A), the amount of the deposit or other form of security remains fully within the reasonable discretion of the Court. Section 366(c) gives courts the same

discretion they had under section 366(b) to determine the amount of payment necessary to provide adequate assurance. *Compare* 11 U.S.C. § 366(b) (“On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment”), *with* 11 U.S.C. § 366(c)(3)(A) (“On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance payment under paragraph (2).”).

21. As part of the Bankruptcy Abuse and Consumer Protection Act of 2005 (“BAPCPA”), Congress had the opportunity to establish a minimum adequate assurance amount that would be required in each case, but did not. Instead, Congress vested such discretion with the courts to determine the appropriate level of adequate assurance required in each case.

22. Moreover, as case law has emphasized, the type of arrangement that constitutes adequate assurance of future payment involves a fact-intensive inquiry, determined on a case-by-case basis. *See In re Anchor Glass Container Corp.*, 342 BR, 872, 875 (Bankr. M.D. Fla. 2005). Courts have recognized that adequate assurance of payment does not constitute an absolute guarantee of payment. *See, e.g., id.*; *In re Astle*, 338 B.R. 855, 861 (Bankr. D. Idaho 2006); *In re Steineback*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) (“Adequate assurance of payment is not ... absolute assurance. The key to achieving the balance required by § 366 is not to confuse adequate assurance with adequate protection, which must be provided to a creditor under 11 U.S.C. § 361,”); *In re Adelphia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002); *see also In re Caldor, Inc.-N.Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (section 366(b) “does not require an “absolute guarantee of payment”), *aff’d sub nom. Virginia Elec. & Power Co. v. Caldor, Inc.-NY*, 117 F.3d 646 (2d Cir. 1997); *Mass. Elm. Co. v. Keydata Corp. (In re Keydata Corp.)*, 12 BR. 156, 158 n.2 (B.A.P. 1st Cir. 1981) (recognizing that adequate assurance does not entitle utilities

to “higher protection in chapter 11 than they enjoy in regular dealings with customers outside the bankruptcy court”).

23. Therefore, section 366 does not give utility companies a blank check or the right to extract from the Debtors whatever amount of adequate assurance they might desire. Nor does section 366 entitle utility companies to receive full collateral for its credit exposure or any other form of guarantee against all risk of potential nonpayment. In some cases, a court may even find that no adequate assurance of payment is necessary. See *Virginia Elec. & Power Co. v. Caldor, Inc.*-NY, 117 F.3d 646, 650 (2d Cir. 1997) (“[W]e agree . . . that a bankruptcy court’s authority to ‘modify’ the level of the ‘deposit or other security,’ provided for under § 366(b), includes the power to require no ‘deposit or other security’ where none is necessary to provide a utility supplier with ‘adequate assurance of payment.’”).

24. The Debtors submit that the adequate assurance set forth herein provides more than adequate assurance of future payment. Furthermore, contemporaneously herewith, the Debtors are seeking approval of debtor-in-possession financing facility that will enable them to pay their operating costs, including utility costs, as they come due. The Debtors anticipate having sufficient resources to pay, and intend to pay all valid postpetition obligations for Utility Services in a timely manner. In addition, the Debtors have significant incentive to stay current on their utility obligations as they come due because of their reliance on the Utility Services for the operation of their businesses. These factors, which the Court may—and should—consider when determining the amount of any adequate assurance payments, justify a finding that the adequate assurance arrangements set forth herein are sufficient to assure the Utility Companies of future payments.

25. Conceivably, under section 366(c)(2) of the Bankruptcy Code, the Debtors could receive a demand from a Utility Company at the end of such thirty-day period and be compelled to accede to the demand immediately or face termination of critical Utility Services. In order to avoid such a drastic result, the Debtors seek the approval of the Additional Adequate Assurance Procedures set forth herein.

26. The proposed Additional Adequate Assurance Procedures are necessary for the Debtors to carry out their reorganization efforts. Without them, the Debtors would be either forced to seek emergency temporary restraining orders each and every time a Utility Company threatened to suspend performance, or to address requests by Utility Companies in an unorganized manner at a critical period in their efforts to reorganize.

27. By establishing the Additional Adequate Assurance Procedures, the Debtors seek to implement an orderly process to determine the amount, if any, of assurance of payment that is adequate. If a Utility Company disagrees with the Debtors' analysis, the Additional Adequate Assurance Procedures will enable the parties to negotiate and, if necessary, seek Court intervention without jeopardizing the Debtors' continuing operations. The orderly process contemplated by the Additional Adequate Assurance Procedures, therefore, is necessary for a smooth transition by the Debtors into Chapter 11.

28. The Court also has the authority to grant the relief sought in this Motion pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) provides that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The purpose of that section is to grant bankruptcy courts the authority to take actions necessary to exercise their power under the Bankruptcy Code.

29. The Debtors' proposed method of furnishing adequate assurance of payment for post-petition Utility Service is not prejudicial to the rights of any Utility Company, and is in the best interest of the Debtors' estates.

30. To successfully implement the foregoing, to the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under Bankruptcy Rule 6004(h).

31. Bankruptcy Rule 6003 provides that to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may approve a motion to "pay all or part of a claim that arose before the filing of the petition" prior to twenty-one (21) days after the Petition Date. Fed. R. Bankr. P. 6003. As described above and in the Cherry Declaration, uninterrupted service from the Utility Companies is essential to the Debtors' continued operations and reorganization efforts. The Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors, as described herein, and that cause exists under Bankruptcy Rule 6003 for immediate authority to establish the Adequate Assurance Procedures.

NOTICE

32. 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; (f) all applicable government agencies to the extent required by the Bankruptcy Rules

and the Local Rules; and (g) the Utility Companies. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

33. No previous request for the relief sought herein has been made to this or any other court.

CONCLUSION

WHEREFORE, based upon the foregoing, the Debtors respectfully request that the Court enter an order substantially in the form annexed hereto (a) granting the relief requested herein and (b) granting such other relief as may be deemed just and proper.

[signature follows]

Dated: February 28, 2012

Respectfully submitted,

/s/ Däna Wilkinson
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-and-

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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

**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**

The relief set forth on the following pages, for a total of 9 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

**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**

Upon the motion (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 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

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

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 in accordance with the Additional Adequate Assurance Procedures contained herein.
3. The Debtors shall not be required to pay the Utility Companies a deposit for the provision of Utility Services to the Debtors in the postpetition period of these Chapter 11 cases, in light of the fact that the Debtors have paid all amounts due and owing to the Utility Companies for Utility Services used in the ordinary course of prepetition business and invoicing, and the Debtors anticipate that they will timely pay all amounts that come due to the Utility Companies during the postpetition period of these Chapter 11 cases, in accordance with the DIP Budget. [The Debtors shall pay as a deposit to each Utility Company the amount of the prepetition portion of the utility bills generated by each Utility Company that has not been paid as of the Petition Date.]
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 _____, 2012 at _____ .m. (Prevailing Eastern Time) before this Court. Any objections to the relief requested in the Motion must be filed with the Clerk of the Bankruptcy Court 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
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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

PROPOSED FINAL ORDER

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

Case No. 12-01220

**FINAL 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**

The relief set forth on the following pages, for a total of 9 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

**FINAL 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**

Upon the motion (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 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;

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.

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 a final basis, as set forth herein.
2. 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 in accordance with the Additional Adequate Assurance Procedures contained herein.
3. The Debtors shall not be required to pay the Utility Companies a deposit for the provision of Utility Services to the Debtors in the postpetition period of these Chapter 11 cases, in light of the fact that the Debtors have paid all amounts due and owing to the Utility Companies for Utility Services used in the ordinary course of prepetition business and invoicing, and the Debtors anticipate that they will timely pay all amounts that come due to the Utility Companies during the postpetition period of these Chapter 11 cases, in accordance with the DIP Budget. [The Debtors shall pay as a deposit to each Utility Company the amount of the prepetition portion of the utility bills generated by each Utility Company that has not been paid as of the Petition Date.]
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 Levengood), 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.

11. 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) (or the official committee of unsecured creditors, if appointed); (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.

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

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

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

15. 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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District Court I.D. No. 4663

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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