

**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 8 pages including this page is hereby
ORDERED

**FILED BY THE COURT
03/16/2012**



Entered: 03/16/2012

Chief US Bankruptcy Judge
District of South Carolina

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

In re:

**The Cliffs Club & Hospitality Group, Inc., et
al.,¹ d/b/a The Cliffs Golf & Country Club,**

Debtors.

CHAPTER 11

Case No. 12-01220

Jointly Administered

**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 [Docket Entry No. 28] (the “Motion”)² of the Debtors for interim and final orders, 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 set forth herein for resolving any Additional Adequate Assurance Requests under Bankruptcy Code section 366(c); and upon

¹ The Debtors, followed by the last four digits of their respective taxpayer identification numbers and Chapter 11 case numbers, are as follows: The Cliffs Club & Hospitality Group, Inc. (6338) (12-01220); CCHG Holdings, Inc. (1356) (12-01223); The Cliffs at Mountain Park Golf & Country Club, LLC (2842) (12-01225); The Cliffs at Keowee Vineyards Golf & Country Club, LLC (5319) (12-01226); The Cliffs at Walnut Cove Golf & Country Club, LLC (9879) (12-01227); The Cliffs at Keowee Falls Golf & Country Club, LLC (3230) (12-01229); The Cliffs at Keowee Springs Golf & Country Club, LLC (2898) (12-01230); The Cliffs at High Carolina Golf & Country Club, LLC (4293) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC (6559) (12-01234); The Cliffs Valley Golf & Country Club, LLC (6486) (12-01236); Cliffs Club & Hospitality Service Company, LLC (9665) (12-01237).

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

consideration of the Cherry Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on 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 as set forth herein or in accordance with the Additional Adequate Assurance Procedures contained herein.
3. The Debtors shall pay as a deposit to each Utility Company an amount equal to the two-week average charge for Utility Services provided by each Utility Company.³
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,

³ The Debtors have reached an agreement with Duke Energy Carolinas, LLC ("Duke Energy") and Carolina Power & Light Company d/b/a Progress Energy Carolinas, LLC ("Progress Energy") regarding the provision of adequate assurance of payment with respect to postpetition Utility Services provided to the Debtors by Duke Energy and Progress Energy; therefore, the terms of this Order shall not apply with respect to Utility Services provided to the Debtors by Duke Energy and Progress Energy, or payments therefor.

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 their 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 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 this Order pursuant to the Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket Entry No. 121], and via first class mail on the Utility Companies identified on Exhibit A, and file a certificate of service evidencing such service.

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.

AND IT IS SO ORDERED.

Prepared and presented by:

/s/ Däna Wilkinson

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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