

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

Case No. 12-01220

**ORDER AUTHORIZING DEBTORS TO ENTER INTO INSURANCE PREMIUM  
FINANCE AGREEMENT**

The relief set forth on the following pages, for a total of 6 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.*,<sup>1</sup> d/b/a The Cliffs Golf & Country Club,**

**Debtors.**

**CHAPTER 11**

**Case No. 12-01220**

**Jointly Administered**

**ORDER AUTHORIZING DEBTORS TO ENTER INTO INSURANCE PREMIUM  
FINANCE AGREEMENT**

This matter is before the Court on the motion [Docket Entry No. 430] (the “Motion”)<sup>2</sup> filed by 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”), requesting, among other things, authority to enter into the Premium Finance Agreement with Premium Finance Company. After due deliberation, and good cause existing to grant the relief requested,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED.

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<sup>1</sup> 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 (7576) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC (6559) (12-01234); The Cliffs Valley Golf & Country Club, LLC (6486) (12-01236); and Cliffs Club & Hospitality Service Company, LLC (9665) (12-01237).

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

2. The Debtors are hereby authorized to enter into and to perform under the Premium Finance Agreement, the form of which is attached hereto as Exhibit "A", and to execute and deliver such documents and amendments to the Premium Finance Agreement that the Debtors and Premium Finance Company may deem reasonably necessary or desirable to carry out the Premium Finance Agreement.

3. Pursuant to Section 364(c) of Title 11 of the United States Code, as amended (the "Bankruptcy Code") and the terms of the Premium Finance Agreement, the Debtors are authorized to grant to Premium Finance Company a first priority security interest (the "Lien") in the Insurance Programs including (but only to the extent permitted by applicable law): (i) all money that is or may become due under the Premium Finance Agreement because of a loss under the Insurance Programs that reduces unearned premiums (subject to the interest of any applicable mortgagee or loss payee); (ii) any return of premiums or unearned premiums under the Insurance Programs; and (iii) any dividends that may become due the Debtors in connection with the Insurance Programs.

4. In the event that the Debtors default under the terms of the Premium Finance Agreement, Premium Finance Company may, in accordance with the terms of the Premium Finance Agreement, and without further order of this Court, cancel the Insurance Programs listed in the Premium Finance Agreement or any amendment thereto and receive and apply the unearned or returned premiums to the account of the Debtors.

5. The full rights of Premium Finance Company pursuant to the Premium Finance Agreement and controlling state law are hereby fully preserved and protected and are and shall remain unimpaired by the pendency of these or any subsequent proceedings under the

Bankruptcy Code, the appointment of a trustee in these cases, or the conversion of any of these cases to a case under Chapter 7 of the Bankruptcy Code.

6. In the event that returned or unearned premiums or other amounts due under the Insurance Programs are insufficient to pay the total amount owing by the Debtors to Premium Finance Company, any remaining amount owing to Premium Finance Company, including reasonable attorneys' fees and costs, shall be an allowed claim in these cases with priority as an administrative expense pursuant to Section 503(b)(1) of the Bankruptcy Code.

7. Any monies due under the Premium Finance Agreement not otherwise satisfied through returned or unearned premiums or through payment of an allowed administrative claim filed by Premium Finance Company shall not be subject to discharge or release in these Chapter 11 proceedings or any corresponding Chapter 7 proceeding, notwithstanding any provision to the contrary set forth in any Chapter 11 Plan or Confirmation Order entered in the above-captioned cases.

8. Notwithstanding anything to the contrary contained in any Order approving secured financing in these cases, the Lien granted to Premium Finance Company hereunder in connection with the Premium Finance Agreement and the Insurance Programs shall be senior to any security interests and/or liens granted to any other secured creditors in the Debtors' cases.

9. Because Premium Finance Company has extended credit to the Debtors in good faith, the reversal or modification of this Order on appeal shall not affect the validity of the debt owed to Premium Finance Company or the priority of its liens, as provided in Section 364(e) of the Bankruptcy Code.

10. The Debtors are hereby authorized to enter into financing agreements in the future with Premium Finance Company without further court order under the following terms:

- (i) Copies of the proposed financing agreement shall be forwarded to the Office of the United States Trustee for the District of South Carolina; counsel for the Committee; counsel to the Indenture Trustee; and counsel to the DIP Lender; and
- (ii) Unless the Debtors receive notice in writing from the Office of the United States Trustee for the District of South Carolina; the Committee; the Indenture Trustee; and/or the DIP Lender within five (5) business days of their receipt of such financing agreement, the Debtors may proceed to enter into said financing agreement.

11. Any future financing agreements entered into by the Debtors and Premium Finance Company, pursuant to the procedure outlined above, will be subject to the same requirements of this Order.

AND IT IS SO ORDERED.

**Prepared and presented by:**

/s/ Däna Wilkinson  
Däna Wilkinson  
District Court I.D. No. 4663  
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-and-

/s/ J. Michael Levengood  
Gary W. Marsh  
Georgia Bar No. 471290  
J. Michael Levengood  
Georgia Bar No. 447934  
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*Attorneys for the Debtors and Debtors in Possession*

**EXHIBIT A**

**PREMIUM FINANCE AGREEMENT**

**PREMIUM FINANCE AGREEMENT  
DISCLOSURE STATEMENT  
AND SECURITY AGREEMENT**

SC License 170299

**Premium Finance Associates, Inc.**

(hereinafter referred to as "Lender")

(Licensed Address)

1 World Financial Center, 200 Liberty Street, New York, NY 10281

(Servicer Address)

1001 Winstead Drive, Ste 500, Cary, NC 27513

Phone: (800) 791-7901

Fax: (919) 234-2760

A	TOTAL PREMIUMS	\$	523,709.00	BORROWER / INSURED (The "Insured") (Name, Address and Telephone Number)  The Cliffs Club & Hospitality Group Inc etal P O Box 1549  Travelers Rest SC 29690 E-Mail Address (optional): 864-371-1037	Acct. No.				
B	CASH DOWN PAYMENT REQUIRED	\$	130,927.25						
C	AMOUNT FINANCED (The Amount of Credit Provided to Insured or on its behalf)	\$	392,781.75						
D	FINANCE CHARGE (Dollar amount credit will cost)	\$	7,207.13	ANNUAL PERCENTAGE RATE 4.87 % (Cost of Credit figured as a yearly rate)					
E	FLORIDA DOCUMENTARY STAMP TAX	\$	0.00	PAYMENT SCHEDULE					
F	TOTAL PAYMENTS (Amounts which will have been paid after making all scheduled payments)	\$	399,988.88	Amount of Each Payment	Number of Payments			1 <sup>st</sup> Payment Due	Final Payment Due
					Annual	Qtrly	Mthly		
				49,998.61			8	08/01/2012	03/01/2013

**SEE PAGE 3 FOR SCHEDULE OF FINANCED POLICIES**

**AGREEMENT OF INSURED (JOINT AND SEVERAL, IF MORE THAN ONE)  
THE UNDERSIGNED INSURED:**

- In consideration of the premium payments being financed and, if applicable, the down payment being advanced by LENDER to the Insurance companies listed on the SCHEDULE OF FINANCED POLICIES, or their representative, agrees to pay LENDER the TOTAL OF PAYMENTS to be made in accordance with the PAYMENT SCHEDULE, and if applicable, the amount of any down payment advanced by LENDER, subject to the provisions set forth in this Agreement.
- a. Irrevocably appoints LENDER Attorney-in-Fact with full authority, in the event of default, to (i) cancel the said Policies in accordance with the provisions herein, (ii) receive all sums assigned to LENDER and (iii) execute and deliver on behalf of the Undersigned Insured all documents, forms and notices relating to the insurance policies listed on the SCHEDULE OF FINANCED POLICIES in furtherance of this Agreement (Clauses (ii) and (iii) not applicable in Florida).
- b. If there is an amount listed as "Brokers Fee" in the Schedule of Policies, this fee is charged under Section 2119 of the New York Insurance Law or the Law, if any, of the state in which Insured lives. This fee is charged for obtaining and servicing the Policy for where the risk to be Insured under the Policy resides (Not applicable in Florida, Virginia, Maryland, Massachusetts or North Carolina).
- c. A fee of \$ 0.00, which is not being financed, has been charged under the provisions of these Laws. If none has been charged, the word "none" is shown (Not applicable in Florida, Virginia, Maryland, Massachusetts or North Carolina).

**INSURANCE PREMIUM FINANCE AGREEMENT NOTICE**

NOTICE: 1. Do not sign this Agreement before you read it or if it contains any blank spaces. 2. You are entitled to a complete filled-in-copy of this agreement. 3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions obtain a partial refund of the service charge. 4. Keep your copy of this Agreement to protect your legal rights.

**AGENT OR BROKER Willis Ins. Svc. of Atlanta, Inc.  
BUSINESS ADDRESS**

One Glenlake Parkway  
11th Floor

Atlanta

GA 30328

**TEL. NO./E-MAIL ADDRESS 404-942-5100**

The Undersigned Agent or Broker:

- Represents and warrants as follows: (a) to the best of the undersigned's knowledge and belief, the Insured's signature is genuine or, to the extent permitted by applicable Law, the undersigned Agent or Broker has been authorized by the Insured to sign this Agreement on their behalf, (b) the Insured has received a copy of this Agreement, (c) the scheduled Policies are in full force and effect and the premiums indicated therefore are correct, (d) the Insured may cancel all scheduled Policies immediately upon request, (e) none of the Policies scheduled in the Agreement are non-cancelable, and (f) the down payment as indicated in Box "B" and installments totaling \_\_\_\_\_ have been collected and are being retained by us.
- Upon cancellation of any of the scheduled Policies, the undersigned Agent or Broker agrees upon demand to pay to LENDER or its assigns their commission on any unearned premiums applicable to the cancelled Policies.

**THE AGENT OR BROKER AGREES TO THE  
PROVISIONS ABOVE AND ON PAGE 3**

**THE INSURED AGREES TO THE PROVISIONS ABOVE AND ON PAGES  
2 AND 3**

DATE

SIGNATURE (AND TITLE) OF INSURED(S) OR AGENT OR  
BROKER ON THEIR BEHALF (to extent permitted by Law)

DATE

SIGNATURE AND TITLE OF AGENT OR BROKER



## ADDITIONAL AGREEMENTS OF INSURED (JOINT AND SEVERAL, IF MORE THAN ONE)

3. **Cancellation.** LENDER may cancel the insurance Policies listed in the schedule after providing at least 10 days written notice of intent to cancel (13 days in New York, 15 days in Pennsylvania) if the Insured does not pay any installment or transfers any of the scheduled policies to a third party, provided said default is not cured within such period, and LENDER may proceed to collect the entire unpaid balance due hereunder or any part thereof by appropriate legal proceedings. If any default results in the cancellation of the Policy, Insured agrees to pay a cancellation charge in accordance with applicable law North Carolina – None; Florida – None).
4. **Money Received After Cancellation.** Any payment received after Policy cancellation may be credited to the indebtedness due hereunder without any liability or obligation on the part of LENDER to request reinstatement of such cancelled Policy. Any sum received from an insurance company shall be credited to the balance due hereunder; any surplus shall be paid over to the Insured; in case of deficiency, the Insured shall pay the same. In the event that LENDER does request a reinstatement of the Policy on behalf of the Insured, such a request does not guarantee that coverage under the Policy will be reinstated or continued. Only the insurance company has authority to reinstate the Policy. The Insured agrees that LENDER has no liability to the Insured if the Policy is not reinstated.
5. **Application of Payments.** If applicable law permits, all payments received by LENDER will be applied to the oldest invoice first. Any remaining amounts will be applied to late fees and other charges (if applicable), the remainder will be applied to any other outstanding amounts.
6. **Returned Check Charge.** If any payment made by check or electronic funding is dishonored for any reason, Insured will be charged the maximum fee, if any, permitted under applicable law (Florida - \$15).
7. **Default.** If any of the following happens: (a) a payment is not made when it is due, (b) a proceeding in bankruptcy, receivership, insolvency or similar proceeding is instituted by or against Insured, or (c) Insured fails to keep any promise the Insured makes in this Agreement; Insured will be in default; provided, however, that, to the extent required by applicable law, Insured may be held to be in default only upon the occurrence of an event described in clause (a) above. Clauses (b) and (c) not applicable in Florida or North Carolina.
8. **Security.** To secure payment of all amounts due under this Agreement, Insured assigns LENDER a security interest in all right, title and interest to the Policy, including (but only to the extent permitted by applicable law): (a) all money that is or may be due Insured because of a loss under the Policy that reduces the unearned premiums (subject to the interest of any applicable mortgagee or loss payee), (b) any return of the premium for the Policy, and (c) dividends which may become due Insured in connection with the Policy.
9. **Right to Demand Immediate Payment in Full.** At any time after default, LENDER can demand and have the right to receive immediate payment (except to the extent otherwise provided by applicable law, in which case LENDER will have the right to receive such payment in accordance with such law) of the total unpaid balance due under this Agreement even if LENDER has not received any refund of unearned premium.
10. **Warranties.** Insured warrants to LENDER (a) to have received a copy of this Agreement and (b) if the Insured is not an individual, that the signatory is authorized to sign this Agreement on behalf of the Insured. The Insured represents that it is not presently the subject of or in contemplation of a proceeding in bankruptcy, receivership, or insolvency, or if it is a debtor in bankruptcy, the Bankruptcy Court has authorized this transaction.
11. **Early Payment.** At any time, Insured may pay the whole amount still unpaid. If Insured pays the full amount before it is due, Insured will be given a refund for the unearned Finance Charge computed by the method of refund as required by applicable law.
12. **Assignments.** Insured may not assign the Policy or this Agreement without LENDER's written consent. However, Insured does not need LENDER's written consent to add mortgagees or other persons as loss payees. LENDER may transfer its rights under this Agreement to anyone without Insured's consent. All of LENDER's rights shall inure to the benefit of LENDER's successors and assigns.
13. **Collection.** If money is due and Insured fails to pay, LENDER may collect the unpaid balance from Insured without recourse to the security interest granted under this Agreement.
14. **Late Charges.** Upon default in payment of any installments for not less than five days (or such greater number of days required by applicable law), Insured agrees to pay a late charge in accordance with applicable law. In no event shall such late charge exceed a maximum of 5% of such installment (greater of \$25 or 1.5% in New Jersey; 5% in Massachusetts; greater of \$10 or 5% in Florida).
15. **Finance Charge.** The finance charge begins to accrue from the effective date of this Agreement or the earliest inception date of the insurance Policy(ies) listed on the Schedule of Policies, whichever is earlier. If LENDER terminates this Agreement due to a default, Insured will pay interest on the outstanding indebtedness at the maximum rate authorized by applicable state law in effect on the date of cancellation and from said date until Insured pays the outstanding indebtedness in full to LENDER. To the extent permitted by applicable law, the Finance Charge may include a nonrefundable agreement charge not to exceed \$20 (\$10 in DE, PA and NY; \$12 in NJ; \$15 in NC, RI and VA; \$16 in MA; \$20 in FL).
16. **Attorney's Fees.** If LENDER hires an attorney to collect any money Insured owes under this Agreement, Insured will pay such attorney fees and other collection costs if and to the extent permitted by applicable law (20% of amount due in Florida).
17. **Agent or Broker.** The Agent or Broker named on the front of this Agreement is neither authorized by LENDER to receive installments payable under this Agreement nor is authorized to make any representations to Insured on LENDER's behalf, either orally or in writing (except to the extent expressly required by applicable law).
18. **Amendments.** If the insurance contract has not been issued at the time of the signing of this Agreement, and if the Policies being financed are assigned risk policies or policies listed in a state fund, the policy numbers, if omitted herein, may be inserted in this Agreement after it has been signed.
19. **Effective Date.** This Agreement will not go into effect until it is accepted by LENDER in writing.
20. **Limitation of Liability.** Insured recognizes and agrees that LENDER is a lender and not an insurance company and that LENDER assumes no liability as an insurer hereunder. LENDER's liability for breach of any of the terms of this Agreement or the wrongful or improper exercise of any of its powers under this Agreement shall be limited to the amount of the principal balance outstanding, except in the event of LENDER's gross negligence or willful misconduct.
21. **Governing Law.** The law of the State of the Insured's residence shall govern this Agreement, except, for Maine Insureds this contract is governed by the laws of the State of Missouri.
22. **Signature and Acknowledgement.** Insured has signed and received a copy of this Agreement. If the Insured is not an individual, the undersigned is authorized to sign this Agreement on behalf of the Insured. All the Insureds listed in any Policy have signed. Insured acknowledges and understands that insurance premium financing law does not require an Insured to enter into a premium financing agreement as a condition of the purchase of any Policy.
23. **Additional Insured.** There is no term or provision in any Policy that would require LENDER to notify or get the consent of any third party to effect cancellation of such Policy.
24. **Classification of Agreement.** This Agreement is and will be a general intangible and not an instrument (as those terms are used in the Uniform Commercial Code) for all purposes.
25. **Formation of Agreement:** Any electronic signature or electronic record may be used in the formation of this Agreement, and the signatures of the Insured and Agent and the record of this Agreement may be in electronic form (as those terms are used in the Uniform Electronic Transactions Act). A photocopy, a facsimile or other paper or electronic record of this Agreement shall have the same legal effect as a manually signed copy.

Document Page 10 of 10										
SCHEDULE OF POLICIES (Continue Schedule on Attachment If Necessary)										
Policy Number and Prefix (itemized)	Place (X) If Not Authorized (See #3 below)	Full Name of Insurance Company and Name and Address of Policy Issuing Agent or Company Office To Which Premium is Paid and Notices are Sent	Type of Policy Premium	Audit Info*	Minimum Earn %	Term in Mos. Cov. By Prem.	Effective Date			Policy Premiums
	X						M/	D/	Y	
		C: Zurich American Insurance Co	UMB :0		0.00	12	07/01/2012			28,800.00
		C: New Hampshire Ins Co	LIA :0		0.00	12	07/01/2012			18,922.00
		C: Zurich American Insurance Co	PKG :0		0.00	12	07/01/2012			239,232.00
		C: Chubb National Insurance Company	WMC :0	A	0.00	12	07/01/2012			196,170.00
		C: Chubb Custom Insurance Co	CRI :0	A	0.00	12	07/01/2012			1,874.00
		C: Chartis Specialty Insurance Company	POL :0	A	0.00	12	07/01/2012			19,211.00
			Brokers Fee							19,500.00
*(AR=ASSIGNED RISK), (A=AUDITABLE), (LS=LOSS SENSITIVE)							TOTAL PREMIUMS (Record in "A")			523,709.00

#### ADDITIONAL REPRESENTATIONS & WARRANTIES OF BROKER OR AGENT

- Warrants that it is the authorized Policy issuing agent of the insurance companies or the broker placing the coverage directly with the insurance company on all the Policies scheduled except those indicated with an "X" above.
- Warrants that there are no policies included in this Agreement which are subject to audit, report of values, retrospective rating, or minimum earned premium, except as indicated below, and that, if there are any, the deposit or provisional premium thereon is not less than the anticipated premium to be earned for the full term of the Policy.  
Policy No.(s): \_\_\_\_\_ Minimum earned premium, if any: \$ \_\_\_\_\_
- Warrants that there are no assigned risk policies in the Schedule of Policies except as indicated in the Schedule of Policies.
- The Agent or Broker will hold in trust for LENDER any payments made or credited to the Insured through the Agent or Broker directly, indirectly, actually or constructively, by any of the insurance companies listed in the Schedule of Policies and will pay the monies to LENDER upon demand to satisfy the then outstanding balance hereunder.
- The Agent or Broker will promptly notify LENDER in writing if any information on this Agreement becomes inaccurate.
- Warrants that all material information concerning the Insured and the Policies necessary for LENDER to cancel the Policies and receive the unearned premium has been disclosed to LENDER.
- There is no term or provision in any Policy that would require LENDER to notify or get the consent of any third party to effect cancellation of such Policy.