

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

**MOTION OF DEBTORS FOR AUTHORITY TO ENTER INTO
INSURANCE PREMIUM FINANCE AGREEMENT**

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”), by and through undersigned counsel, and hereby file this motion for an order for authority to enter into an insurance premium financing agreement, respectfully stating as follows:

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.

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 (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).

BACKGROUND

2. On February 28, 2012 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

3. On March 12, 2012, the United States Trustee appointed the Official Committee of Unsecured Creditors (the "Committee") in these Chapter 11 cases pursuant to that certain Fourth Amended Appointment of Committee of Unsecured Creditors [Docket Entry No. 141]. No trustee or examiner has been appointed in these Chapter 11 cases.

4. The Debtors are authorized to operate their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

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"), which has been filed with the Court [Docket Entry No. 44].

6. On the Petition Date, the Debtors filed their Motion Pursuant to Sections 105(a), 362(d), 363(b), 363(c) and 503(b) of the Bankruptcy Code (I) For Authorization to (a) Continue Their Workers' Compensation, Liability, Property, and Other Insurance Programs, (b) Pay All Obligations in Respect Thereof and (c) Enter Into Premium Financing Agreements in the Ordinary Course of Business, and (II) For Authorization for Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations [Docket Entry No. 32] (the "First Day Insurance Motion").

7. On March 5, 2012, this Court approved the First Day Insurance Motion on an interim basis [Docket Entry No. 95], and on March 16, 2012, this Court approved the First Day Insurance Motion on a final basis [Docket Entry No. 160], thereby authorizing the Debtors to

enter into new insurance premium financing agreements in the ordinary course of business in connection with the Debtors' renewal of their existing insurance programs, all as set forth in the First Day Insurance Motion.

8. On May 22, 2012, the Debtors filed the Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor (the "Plan")² [Docket Entry No. 365] and the Disclosure Statement to Accompany the Joint Chapter 11 Plan filed by the Debtors and the Plan Sponsor (the "Disclosure Statement") [Docket Entry No. 366].

9. On May 24, 2012, this Court entered the Order Setting Hearing on Disclosure Statement [Docket Entry No. 368], setting a hearing on July 2, 2012 to consider approval of the Disclosure Statement.

REQUESTED RELIEF

10. Out of an abundance of caution, consistent with the authority granted to the Debtors by this Court on May 16, 2012 to enter into new insurance premium financing agreements in the ordinary course of business, and pursuant to Sections 105(a), 362(d), 363(b), 363(c), 364 and 503(b) of the Bankruptcy Code, the Debtors request the entry of an order, substantially in the form attached hereto as Exhibit A, authorizing the Debtors to enter into a Premium Finance Agreement (as defined below) in the ordinary course of business.

11. In connection with the operation of their business, the Debtors maintain numerous general liability, property and other insurance programs (the "Insurance Programs") through one or more insurance carriers, which Insurance Programs the Debtors are renewing effective July 1, 2012.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

12. Because it is not always economically advantageous for the Debtors to pay the insurance premiums for all of the Insurance Programs on a lump-sum basis, in the ordinary course of the Debtors' business, the Debtors attempt to finance the premiums pursuant to one or more premium financing arrangements with third-party lenders.

13. The Debtors are prepared to execute a Premium Finance Agreement (the "Premium Finance Agreement") with Premium Funding Associates, Inc. (Imperial Finance) ("Premium Finance Company") for the financing of the Debtors' Insurance Programs, in substantially the form of agreement attached hereto as Exhibit B.³

14. Pursuant to the Premium Finance Agreement, Premium Finance Company will provide financing to the Debtors for the purchase of the Insurance Programs, which are essential for the operation of the Debtors' businesses. Under the Premium Finance Agreement, the total amount to be financed is approximately \$550,000.00. Under the Premium Finance Agreement, the Debtors will become obligated to pay Premium Finance Company the sum of approximately \$650,000.00, inclusive of a down payment in the amount of approximately \$100,000.00. The balance will be paid in 10 monthly installments of approximately \$55,000.00 each.

15. As collateral to secure the repayment of the indebtedness under the Premium Finance Agreement, pursuant to the terms of the Premium Finance Agreement, the Debtors are granting Premium Finance Company a security interest in, among other things, the unearned premiums of the Insurance Programs.

³ The Debtors will file a supplemental exhibit to this motion including the Premium Finance Agreement, once finalized. The finalized Premium Finance Agreement will show, *inter alia*, the total amount to be financed, the total amount the Debtors will become obligated to pay to Premium Finance Company under the Premium Finance Agreement, any down payment required, and the monthly installments to be paid, good faith estimates of each being provided in paragraph 14 herein.

16. Pursuant to the terms of the Premium Finance Agreement:
- (i) in the event that the Debtors default under the terms of the Premium Finance Agreement, Premium Finance Company may, without further order of the 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;
 - (ii) 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;
 - (iii) 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;
 - (iv) the full rights of Premium Finance Company pursuant to the Premium Finance Agreement and controlling state law are 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 any of

these cases, or the conversion of any of these cases to a case under Chapter 7 of the Bankruptcy Code; and

- (v) notwithstanding anything to the contrary contained in any Order approving secured financing in these cases, the security interests granted to Premium Finance Company 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.

17. The Debtors believe that the terms of the Premium Finance Agreement are commercially fair and reasonable, including the granting of a lien on the Insurance Programs to Premium Finance Company. The Debtors are required to maintain adequate insurance coverage, and without it would be forced to cease operations. The Debtors have been unable to obtain unsecured credit to fund the Insurance Programs.

18. The Debtors respectfully submit that Premium Finance Company has extended credit to the Debtors in good faith, and accordingly, the reversal or modification of the proposed order on appeal should 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.

19. The Debtors respectfully request authority 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 will 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 (as defined in the Cherry

Declaration); and counsel to the DIP Lender (as defined in the Cherry Declaration); 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.

20. The Debtors propose that 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 any order approving this motion.

21. The relief requested by this Motion is warranted and appropriate under the circumstances. The Debtors submit that authorization of the Premium Finance Agreement will ensure that the Debtors can continue necessary operations, and will not prejudice the legitimate interests of creditors and other parties in interest, including the Debtors' secured creditors.

22. The Debtors propose to serve a copy of this Motion and the notice of hearing thereon in accordance with the Order Establishing Certain Notice, Case Management and Administrative Procedures [Docket Entry No. 121]. The Debtors respectfully submit that no further notice is necessary.

WHEREFORE, the Debtors respectfully request that this Court enter an Order substantially in the form annexed hereto as Exhibit A, authorizing them to enter into the Premium Finance Agreement with Premium Finance Company, and the Debtors and Premium Finance Company be authorized and directed to take all actions necessary or appropriate to

affect the Premium Finance Agreement, and for such other and further relief as is just and proper.

Dated: June 21, 2012

Respectfully submitted,

/s/ Däna Wilkinson

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

/s/ J. Michael Levensgood

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Attorneys for the Debtors and Debtors in Possession

EXHIBIT A

PROPOSED ORDER

**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.*,¹ *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. ____] (the “Motion”)² 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.

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 (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).

² 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
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/s/ J. Michael Levengood
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Attorneys for the Debtors and Debtors in Possession

EXHIBIT B

FORM OF PREMIUM FINANCE AGREEMENT

**PREMIUM FINANCE AGREEMENT
DISCLOSURE STATEMENT
AND SECURITY AGREEMENT**
SC License 170299

Premium Funding 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	\$	586,881.00	BORROWER / INSURED (The "Insured") (Name, Address and Telephone Number)	Acct. No.		
B	CASH DOWN PAYMENT REQUIRED	\$	88,032.15				
C	AMOUNT FINANCED (The Amount of Credit Provided to Insured or on its behalf)	\$	498,848.85	The Cliffs Communities Inc The Cliffs Club & Hospitality Group Inc P O Box 1549 Travelers Rest SC 29690 E-Mail Address (optional): 864-371-1037			
D	FINANCE CHARGE (Dollar amount credit will cost)	\$	10,786.55	ANNUAL PERCENTAGE RATE 4.69 % (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)	\$	509,635.40	Amount of Each Payment	Number of Payments	1 st Payment Due	Final Payment Due
				50,963.54	Annual	Qtrly	Mthly

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 \$ none, 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).

**AGENT OR BROKER Willis Insurance Services 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

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.

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

7-11-15
DATE

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

7/15/11
DATE

[Signature]
SIGNATURE AND TITLE OF AGENT OR BROKER

Cliffs Communities
Club + Hosp. Group

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.