

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

In re:

CCHG Liquidation Co.,

Debtor.

CHAPTER 11

Case No. 12-01220

Substantively Consolidated

**MOTION PURSUANT TO SECTIONS 363(b), (f), AND (m) OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULES 2002 AND 6004 FOR AUTHORIZATION TO SELL
RIGHTS TO PAYMENTS TO WHICH THE DEBTORS MAY BE ENTITLED
PURSUANT TO THE CLASS ACTION INTERCHANGE LITIGATION FREE AND
CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES**

COMES NOW Katie S. Goodman, as Liquidation Trustee of the Liquidating Trust for the bankruptcy estates of The Cliffs Club & Hospitality Group, Inc., *et al.* (now substantively consolidated with CCHG Liquidation Co. ("Debtor")),¹ by and through undersigned counsel, and respectfully represents:

Background

1. On February 28, 2012, The Cliffs Club & Hospitality Group, Inc. and its ten affiliated debtors ("Debtors") filed for bankruptcy relief under chapter 11 of title 11 of the

¹ The debtors (now substantively consolidated as the single Debtor), 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. n/k/a CCHG Liquidation Co. (6338) (12-01220); CCHG Holdings, Inc. (1356) (12-01223); The Cliffs at Mountain Park Golf & Country Club, LLC n/k/a CCHG Liquidation Co. II, LLC (2842) (12-01225); The Cliffs at Keowee Vineyards Golf & Country Club, LLC n/k/a CCHG Liquidation Co. III, LLC (5319) (12-01226); The Cliffs at Walnut Cove Golf & Country Club, LLC n/k/a CCHG Liquidation Co. IV, LLC (9879) (12-01227); The Cliffs at Keowee Falls Golf & Country Club, LLC n/k/a CCHG Liquidation Co. V, LLC (3230) (12-01229); The Cliffs at Keowee Springs Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VI, LLC (2898) (12-01230); The Cliffs at High Carolina Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VII, LLC (7576) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VIII, LLC (6559) (12-01234); The Cliffs Valley Golf & Country Club, LLC n/k/a CCHG Liquidation Co. IX, LLC (6486) (12-01236); and Cliffs Club & Hospitality Service Company, LLC n/k/a CCHG Liquidation Co. X, LLC (9665) (12-01237).

United States Code (“Bankruptcy Code”) in the United States Bankruptcy Court for the District of South Carolina (“Bankruptcy Court”).

2. On August 17, 2012, the Bankruptcy Court confirmed the First Amended and Restated Joint Chapter 11 Plan Filed by the Debtors and the Plan Sponsor, as amended (“Plan”). Section 5.04 of the Plan established a Liquidating Trust with respect to the Debtors, and Katie S. Goodman was appointed as Liquidation Trustee (“Trustee” or “Seller”).

3. Section 8.02 of the Plan authorized the Trustee to, among other things, pursue all Retained Actions (as defined in the Plan), including certain litigation rights, claims, causes of action, defenses and counter claims of the Debtors’ bankruptcy estates (“Litigation Rights”).

4. Trustee is authorized by the Plan to sell the Litigation Rights. The Asset, defined *infra*, is a Litigation Right that the Trustee is authorized by the Plan to sell.

Jurisdiction

5. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

6. By this motion, pursuant to section 363 of the Bankruptcy Code and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), the Trustee seeks authorization to sell the rights to any payments the Debtors may recover as a result of their potential involvement as putative class members in the litigation styled In re: Payment Card Interchange Fee and Merchant-Discount Antitrust Litigation (Case No. 1:05-md-01720-JG-JO) (“Class Action Interchange Litigation”) (or to any subsequently filed amended complaints) filed

in the United States District Court for the Eastern District of New York (“Eastern District Court”), free and clear of all liens, claims and encumbrances thereon.

The Class Action Interchange Litigation

7. On October 20, 2005, the Class Action Interchange Litigation was commenced in the Eastern District Court by various retailers and trade associations (“Plaintiffs”) against, among other entities, Visa U.S.A. Inc. (“Visa”) and Mastercard International, Inc. (“Mastercard” and collectively with all other named defendants in the Class Action Interchange Litigation, the “Defendants”). The Plaintiffs claim that, between January 1, 2004 and the present, the Defendants conspired to unlawfully fix the price of “interchange fees” and other fees charged to merchants for transactions processed over the Visa and Mastercard networks. An Interchange fee is a fee that a merchant’s bank pays a customer’s bank when merchants accept cards using card networks such as Visa and MasterCard for purchases.

8. As of the date hereof, the Plaintiffs have not yet certified a class in the Class Action Interchange Litigation, a trial date has not been announced, and a settlement (“Settlement”) has not been reached. If the Plaintiffs are successful in certifying a class and either prevail in the Class Action Interchange Litigation or such litigation results in a Settlement (“Settlement Event”), the Debtors may be included in the class and, accordingly, may be entitled to a monetary recovery (“Asset”). At this time, however, it is impossible to predict whether the Plaintiffs will prevail or whether a Settlement Event will occur.

The Trustee’s Proposed Sale of the Debtors’ Right to the Payments

9. In order to bring additional assets into the substantively consolidated estate, the Trustee proposes to sell the Debtors’ contingent rights to the Asset to Cascade Settlement

Services LLC (“Purchaser” or “Cascade”). The Trustee negotiated the Asset Purchase and Sale Agreement (“Sale Agreement”), annexed hereto as Exhibit A, with the Purchaser.

10. The Sale Agreement provides for the sale of the Asset by the Trustee to the Purchaser for a purchase price of \$20,000.00 (“Purchase Price”). Having failed to receive any other offers for the Asset and given Cascade’s assumption of certain risks, including: (a) the risk that the Plaintiffs fail to certify a class in the Class Action Interchange Litigation; (b) the risk that a Settlement Event does not occur; (c) the risk that the case is dismissed; (d) the risk that the Defendants prevail; (e) the risk that the size of any potential settlement fund is unknowable prior to the Settlement Event; and (f) the risk that the ultimate payment of any awards could occur many years into the future, the Trustee negotiated the Sale Agreement with the Purchaser.

11. Subject to this Court’s approval of the Sale Agreement, the sale of the Asset to the Purchaser will be free and clear of any and all claims, liens, encumbrances, judgments and security interests. The salient terms of the Sale Agreement are summarized below:²

- **Sale and Purchase of Asset.** Purchaser agrees to purchase all right, title and interest in the Asset from the Seller, and the Seller agrees to sell, transfer and assign all right, title and interest in the Asset to Purchaser (Sale Agreement § 2.1).
- **Payment of Purchase Price.** In consideration for the sale of the Asset by the Seller to Purchaser, Purchaser will wire transfer to the Seller the Purchase Price using wire instructions to be provided by the Seller, within 10 business days of the later of (i) full execution of the Sale Agreement and (ii) approval of the Sale by the Bankruptcy Court (Sale Agreement §§ 2.1 and 2.2).
- **Notice of Assignment.** In addition to the Sale Agreement, the Parties will execute a Notice of Assignment, attached hereto as Exhibit B (Sale Agreement §2.2(c)).

² The following represents only a summary of the salient provisions of the Sale Agreement; the Sale Agreement itself should be referred to in its entirety for the specific terms and conditions thereof. If there is any inconsistency between the following summary and the Sale Agreement, the terms and conditions of the Sale Agreement will control. Capitalized terms used, but not defined in the following summary, have the meaning ascribed to such terms in the Sale Agreement.

- **No Assumption of Obligations or Liabilities.** Upon the execution of the Sale Agreement, Purchaser shall assume all obligations and liabilities relating to the Asset but shall not assume or in any way become liable for any obligation or liability of the Seller independent of the Asset (Sale Agreement §2.6).
- **Title to Asset; No Liens.** The Seller represents and warrants that Seller has good, valid and marketable title to the Asset and the Asset is free and clear of any mortgage, pledge, lien, security interest, claim or encumbrance. The Seller has not transferred the Asset or any interest therein except to Purchaser under the Sale Agreement (Sale Agreement §3.5).
- **No Fiduciary or Confidential Relationship.** The Seller acknowledges that the Seller and Purchaser are not in a fiduciary, confidential, agency or otherwise special relationship, including one of trust, confidence or privity, and that the Seller and Purchaser are each acting for their own self-interest and Purchaser acknowledges same (Sale Agreement §§3.12 & 4.12).
- **Waiver of Claims.** The Seller covenants that, to the maximum extent permitted by law, they will not assert and will waive any and all claims against Purchaser or any of its members, officers, directors, employees, agents or affiliates with respect to the Sale Agreement, any ancillary agreement or the transactions contemplated in the Sale Agreement or thereby based on any claim that Purchaser had superior or additional information material to a decision to sell or buy the Asset (Sale Agreement §5.2).

Sale of the Debtors' Rights to the Asset Pursuant to the Terms of the Sale Agreement Is an Appropriate Exercise of Sound Business Judgment and Should Be Approved

12. Section 363(b)(1) of the Bankruptcy Code governs the sale of assets of a debtor outside the ordinary course of business. Specifically, that section provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” In determining whether to authorize the sale of property outside the ordinary course of business, courts require a debtor “to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999). *See also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 178 (D. Del. 1991) (affirming decision permitting debtor to sell assets where sound business reasons supported the sale). When a sound business purpose

exists, and the sale is made in good faith, a sale pursuant to section 363(b)(1) of the Bankruptcy Code should be approved. *See In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 150-51 (3d Cir. 1986) (noting that when a court authorizes a sale of assets pursuant to section 363(b)(1), it is required to consider the “good faith” of the purchaser).

13. In the instant case, the Trustee submits that sound business justification exists which merits judicial approval of the proposed sale. The Purchase Price is reasonable and, to the best of the Trustee’s knowledge, there is no other potential buyer willing to pay more for this contingent asset. Indeed, a trial has not been commenced in the Class Action Interchange Litigation and a class has yet to be certified. It may be years before the Debtors would recover anything, assuming a class is certified in the Class Action Interchange Litigation, the Debtors are members of the class, and the class is successful in obtaining a recovery. Therefore, the benefit of receiving immediate payments for a contingent asset that may not otherwise result in a recovery for over several years is clear. The sale will allow the Debtor to immediately realize additional funds for the benefit of the now substantively consolidated estate, thereby increasing the pool of assets available for creditor distribution. Thus it is the Trustee’s sound business judgment that the value to be realized by the Debtor’s estate through the sale of the Asset, and the fact that the proposed sale is the end result of good-faith negotiations between the Trustee and the Purchaser, the proposed sale of the Asset to the Purchaser is in the best interest of the Debtor, its estate and its creditors.

An Auction of the Debtors’ Rights to the Contingent Asset Is Not Required

14. In accordance with Bankruptcy Rule 6004(f)(1), asset sales outside of the ordinary course of business may be by private or public sale. Fed. R. Bankr. P. 6004(f)(1). A debtor has broad discretion in determining the manner in which its assets are sold. *Berg v. Scanlon (In re*

Alisa P'ship), 15 B.R. 802, 802 (Bankr. D. Del. 1981) (“[T]he manner of [a] sale is within the discretion of the trustee . . .”); *In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) (noting that a trustee has “ample discretion to administer the estate, including authority to conduct public or private sales of estate property.”) (internal quotations and citations omitted). As long as a debtor maximizes the return to its estate, a court should defer to a debtor’s business judgment of how to conduct a sale of its assets. *Id.* at 532 (recognizing that although a trustee’s business judgment enjoys great judicial deference, a duty is imposed on the trustee to maximize the value obtained from a sale); *In re Nepsco, Inc.*, 36 B.R. 25, 26 (Bankr. D. Me. 1983) (“Clearly, the thrust of th[e] statutory scheme [governing 363 sales] is to provide maximum flexibility to the trustee, subject to the oversight of those for whose benefit he acts, i.e., the creditors of the estate.”). Accordingly, if a debtor concludes that conducting a private sale, as opposed to a public auction, is in the best interest of the estate, the debtor should be permitted to do so. *Penn Mut. Life Ins. Co. v. Woodscape Ltd. P'ship (In re Woodscape Ltd. P'ship)*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (noting that, with respect sales of estate property, “[t]here is no prohibition against a private sale . . . and there is no requirement that the sale be by public auction.”).

15. The Trustee submits that a private sale of the Debtors’ rights to the Asset is appropriate. The Trustee does not believe that there are any other parties that would offer funds for this Asset. The delay and costs associated with marketing the Debtors’ rights to the Asset would likely negate any benefit to be derived through a public sale of the Asset. Accordingly, the Trustee submits that a private sale of the Debtors’ rights to the Asset is in the best interest of the substantively consolidated Debtor’s estate and should be approved.

Sale of the Debtors' Rights to the Asset
Free and Clear of Liens, Claims and Encumbrances Is Appropriate

16. The Trustee further submits that it is appropriate that the rights to the Asset be sold free and clear of liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances, or interests to attach to the sale proceeds thereof. Section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

17. To facilitate the sale of the Debtors' rights to the Asset, the Trustee seeks authorization to sell such rights free and clear of any and all liens, claims and encumbrances, with such liens, claims and encumbrances to attach to the net proceeds of such sale with the same rights and priorities therein. Because section 363(f) is stated in the disjunctive, when selling property of the estate it is only necessary to meet one of the five conditions of that section. 11 U.S.C. § 363(f). *See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (“[Section 363(f)] is written in the disjunctive, not the conjunctive.

Therefore, if any of the five conditions of § 363(f) are met, the trustee has the authority to conduct the sale free and clear of all liens.”).

18. As of the date hereof, the Trustee is not aware of any liens or interests held by any party in respect of the Debtors’ rights to the Asset. The Trustee submits that the Court should authorize the sale of the Debtors’ rights to the Asset free and clear of any and all liens, claims and encumbrances, with any of the same to be transferred and attached to the net proceeds of the sale, with the same validity and priority that such liens, claims and encumbrances had against the rights to the Asset. Thus, the sale of the Debtors’ rights to the Asset free and clear of liens, claims and encumbrances will satisfy the statutory prerequisites of section 363(f) of the Bankruptcy Code.

Good Faith Purchaser

19. Section 363(m) of the Bankruptcy Code protects the sale of a debtor’s property to a good faith purchaser. Section 363(m) provides,

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

20. Although the Bankruptcy Code does not define “good faith purchaser,” the United States Court of Appeals for the Third Circuit (“Third Circuit”) has noted that the phrase “encompasses one who purchases in ‘good faith’ and ‘for value.’” *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 147. Further, the Third Circuit has recognized that the type of misconduct that would destroy a purchaser’s good faith status involves “‘fraud, collusion between the purchaser

and other bidders or the Debtor, or an attempt to take grossly unfair advantage of other bidders.”
Id. (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)). The terms and conditions of the sale of the Debtors’ rights to the Asset to the Purchaser were negotiated by the Trustee at arms’-length and in good faith. Accordingly, the Trustee requests the Court determine the Purchaser to be acting in good faith and entitled to the protections afforded to good faith purchasers under section 363(m) of the Bankruptcy Code.

21. To successfully implement the Sale Agreement, the Trustee seeks a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h).

No Previous Request

22. No previous request for the relief sought herein has been made by the Trustee to this Court or any other court.

WHEREFORE, the Trustee respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

[signature follows]

Dated: December 3, 2012

Respectfully submitted,

/s/ Dána Wilkinson

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Counsel for the Debtor and Liquidation Trustee

Exhibit A - Sale Agreement

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ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into this 30th day of November, 2012, by and between CASCADE SETTLEMENT SERVICES LLC, a Delaware limited liability company ("Purchaser"), and KATIE S. GOODMAN, AS THE LIQUIDATION TRUSTEE OF THE LIQUIDATING TRUST FOR THE CLIFFS CLUB & HOSPITALITY GROUP, INC. n/k/a CCHG LIQUIDATION CO. and those of its affiliates that are debtors in the bankruptcy cases, substantively consolidated under case number 12-01220 in the United States Bankruptcy Court for the District of South Carolina ("Seller"). Purchaser and Seller are sometimes collectively referred to in this Agreement as "Parties" or individually as "Party."

RECITALS

- A. On February 28, 2012, The Cliffs Club & Hospitality Group, Inc., *et al.*¹ ("Debtors") filed for bankruptcy relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court for the District of South Carolina ("Bankruptcy Court").
- B. On August 17, 2012, the Bankruptcy Court confirmed the First Amended and Restated Joint Chapter 11 Plan Filed by the Debtors and the Plan Sponsor, as amended ("Plan"). The Plan established a Liquidating Trust and appointed Katie S. Goodman as Liquidation Trustee ("Trustee").
- C. The Plan authorized the Trustee to, among other things, pursue all Retained Actions (as defined in the Plan), including certain litigation rights, claims, causes of action, defenses and counter claims of the Debtors' bankruptcy estates ("Litigation Rights"). Litigation Rights included certain causes of action that the Debtors or their estates had or has against any person or entity.
- D. Purchaser has requested that Seller seek Bankruptcy Court approval of this Agreement. Consequently, this Agreement remains subject to Bankruptcy Court approval through entry of an order approving this Agreement and finding that Purchaser is a "Purchaser in Good Faith" pursuant to section 363(m) of the Bankruptcy Code (the "Sale Order").

¹ The debtors in these cases (now substantively consolidated as the single debtor), 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. n/k/a CCHG Liquidation Co. (6338) (12-01220); CCHG Holdings, Inc. (1356) (12-01223); The Cliffs at Mountain Park Golf & Country Club, LLC n/k/a CCHG Liquidation Co. II, LLC (2842) (12-01225); The Cliffs at Keowee Vineyards Golf & Country Club, LLC n/k/a CCHG Liquidation Co. III, LLC (5319) (12-01226); The Cliffs at Walnut Cove Golf & Country Club, LLC n/k/a CCHG Liquidation Co. IV, LLC (9879) (12-01227); The Cliffs at Keowee Falls Golf & Country Club, LLC n/k/a CCHG Liquidation Co. V, LLC (3230) (12-01229); The Cliffs at Keowee Springs Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VI, LLC (2898) (12-01230); The Cliffs at High Carolina Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VII, LLC (7576) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VIII, LLC (6559) (12-01234); The Cliffs Valley Golf & Country Club, LLC n/k/a CCHG Liquidation Co. IX, LLC (6486) (12-01236); and Cliffs Club & Hospitality Service Company, LLC n/k/a CCHG Liquidation Co. X, LLC (9665) (12-01237).

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- E. On February 20, 2009, a Second Amended Class Action Complaint entitled In re: Payment Card Interchange Fee and Merchant-Discount Antitrust Litigation (Case No. 1:05-md-01720-JG-JO) ("Litigation") was filed in the United States District Court for the Eastern District of New York ("District Court"). If the plaintiffs in the Litigation are successful in certifying a class and either prevail in the Litigation or such Litigation results in a settlement ("Settlement Event"), the Seller may be included in the class and, accordingly, may be entitled to a monetary recovery ("Asset"). Whether such recovery will occur is unknown by Seller and Purchaser at the time of this Agreement. If no Settlement Event takes place, the Asset will have no value.
- F. The Asset is a Litigation Right that the Seller is authorized by the Plan to sell.
- G. Purchaser is not affiliated with any counsel involved in the Litigation or the District Court.
- H. Following a Settlement Event, it is anticipated that the fixed aggregate amount of the settlement will be allocated *pro rata* among claimants to the settlement proceeds, in a manner to be described in documents approved by the District Court.
- I. All terms used herein and not defined herein shall have the meanings given such terms in the Litigation filings.
- J. The Parties intend to transfer from Seller to Purchaser any and all of the Seller's and/or Debtors' right, title and interest in and or associated with, or connected in any manner to, any Asset that may arise from the Litigation.
- K. Purchaser is in the business of purchasing claims from entities entitled to recover funds from both existing class action lawsuit settlements and from pending class action litigation that may or may not result in a settlement.
- L. Purchaser desires to purchase the Asset from Seller, and Seller desires to sell the Asset to Purchaser as provided for in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

SECTION 1 – RECITALS INCORPORATED IN AGREEMENT

- 1.1 The above recitals are hereby incorporated herein by reference.

SECTION 2 – TERMS OF PURCHASE AND SALE

- 2.1 Sale and Purchase of Asset. On the terms and subject to the conditions and other provisions set forth in this Agreement, Purchaser agrees to purchase all right, title and interest in the Asset from Seller, and Seller agrees to sell, transfer and assign all right,

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title and interest in the Asset to Purchaser subject to approval of the Bankruptcy Court, for the sum of \$20,000.00 ("Purchase Price"). Following entry of the Sale Order by the Bankruptcy Court, which Sale Order has not been stayed by a court of competent jurisdiction, the sale shall be final.

- 2.2 Closing. The transactions contemplated by this Agreement will be consummated at a closing as follows:
- (a) The closing of the purchase and sale of the Asset ("Closing") will take place via facsimile and mail on or before 15 business days of (i) full execution of this Agreement and (ii) entry of the Sale Order by the Bankruptcy Court, which Sale Order has not been stayed by a court of competent jurisdiction. The date and time the Closing actually occurs are referred herein to as the "Closing Date." The Closing will be effective as of 12:01 a.m., Pacific Standard Time, on the Closing Date.
 - (b) Purchaser shall pay to Seller at the Closing an amount equal to the Purchase Price in immediately available funds by confirmed wire transfer to a bank account to be designated by Seller no later than the second business day prior to the Closing Date.
 - (c) At the Closing, Seller shall execute and deliver to Purchaser the Notice of Assignment, in the form attached hereto as Exhibit A ("Assignment") and the Authorization to Obtain Transactional Data, in the form attached hereto as Exhibit B ("Data Authorization", with Assignment, the "Ancillary Agreements").
- 2.3 Cooperation of Seller. Seller understands and acknowledges that in order for Purchaser to verify and/or collect the Asset, Purchaser may require Seller's reasonable assistance, and Seller agrees to provide such reasonable assistance to Purchaser, in the event that a claims administrator appointed in the Litigation ("CA"), Lead Counsel or the District Court audits and/or withholds payment on the Asset pending verification of data within Seller's reasonable possession and/or control.
- 2.4 Remedy for Disallowed Purchase. If the Purchase is disallowed, for any reason, following the payment of the Purchase Price, notwithstanding Bankruptcy Court approval, the Purchaser retains the right to recover from future recoveries from the Litigation an amount equal to the sum of the Purchase Price plus interest accrued at an annual rate of 10% ("Interest Payment"). The Interest Payment will be assessed for the period of time elapsed between the date of the payment of the Purchase Price and date the Purchase Price has been repaid to the Purchaser.
- 2.5 Actions by Purchaser. Purchaser expressly reserves the right to take any steps it deems reasonable and necessary in order to maximize Purchaser's recovery in respect of the Asset.
- 2.6 No Assumption of Obligations or Liabilities. Upon the later of (i) full execution of this Agreement and (ii) entry of the Sale Order by the Bankruptcy Court, which Sale Order has not been stayed by a court of competent jurisdiction, Purchaser shall assume all

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obligations and liabilities relating to the Asset but shall not assume or in any way become liable for any other obligation or liability of the Seller independent of the Asset.

SECTION 3 - REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Purchaser as follows:

- 3.1 Organization. Seller is the Liquidation Trustee in The Cliffs Club & Hospitality Group, Inc., et al.'s bankruptcy cases, substantively consolidated under case number 12-01220, duly appointed and authorized by the Bankruptcy Court to sell the Asset.
- 3.2 Authorization. Subject to the entry of the Sale Order, the Seller has the requisite power and authority to execute and deliver this Agreement or any Ancillary Agreement, and to perform the transactions contemplated hereby or thereby, and that such performance does not constitute a violation of the Debtors' certificates of incorporation, by-laws or any other valid instrument to which Seller or Debtors are a party or by which Seller or Debtors may be bound.
- 3.3 Due Execution; Validly Binding Agreement. Subject to the entry of the Sale Order, this Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Seller, enforceable against it in accordance with its terms.
- 3.4 No Litigation. There is no known suit, action, litigation or other proceeding or governmental or administrative investigation or inquiry, pending or threatened against the Seller or Debtors or concerning the Asset that could prevent or prohibit Seller from selling the Asset or from otherwise complying in full with the provisions of this Agreement except for the requirement of Bankruptcy Court approval for the sale of the Asset. Subject to Bankruptcy Court approval, transfer of the Asset pursuant to this Agreement will not breach, violate or otherwise contravene any applicable law, statute, regulation or contractual term.
- 3.5 Title to Asset; No Liens. Seller has good, valid and marketable title to the Asset, and Seller can sell the Asset free and clear of any mortgage, pledge, lien, security interest, claim or encumbrance pursuant to section 363(f) of the Bankruptcy Code. Seller has not transferred the Asset or any interest therein except to Purchaser hereunder.
- 3.6 Information Provided to Purchaser. All information provided to Purchaser by Seller in connection with the sale of the Asset, including, but not limited to, information on dates on which the Debtors began accepting Visa and/or MasterCard credit card and/or debit transactions, financial information about the Debtors' businesses (including total United States sales) and any other representations actually or potentially concerning the Asset is true, correct and complete to the best of Seller's knowledge, information and belief. Seller has made the following Representations or Warranties to Purchaser:
 - i. Seller has not had any communications with the District Court, Lead Counsel or any other entity affiliated with the Litigation regarding the Litigation.

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- ii. Seller warrants that, should a Settlement Event occur, if asked by the District Court, Lead Counsel, the CA or any other entity affiliated with the settlement, Seller will state that (1) Seller never intended to opt-out of the Litigation; (2) Seller never gave any entity any indication of an intent to opt-out of the Litigation; and (3) Seller never authorized any entity to opt-out of the Litigation on Debtors' behalf.
 - iii. Seller warrants that if requested by Purchaser and if a Settlement Event should occur, it will provide an affidavit stating that (1) Seller never intended to opt-out of the Settlement Event; (2) Seller never gave any entity any indication of an intent to opt-out of the Settlement Event; and (3) Seller never authorized any entity to opt-out of the Settlement Event on Debtors' behalf.
 - iv. Seller warrants that it will never take any position inconsistent with the representations and warranties contained herein.
- 3.7 Independent Investigation. Aside from Representations or Warranties contained herein, Seller acknowledges that it has conducted its own independent evaluation of the transactions contemplated under this Agreement. Seller further acknowledges that it has had an opportunity to conduct its own independent investigation regarding the Asset. Seller has had an opportunity to review the documents and information available through publicly available sources of information.
- 3.8 No Reliance. Aside from Representations or Warranties contained herein, Seller has conducted an independent evaluation of the reasonableness of the Purchase Price and has decided to enter into this Agreement and undertake the transactions contemplated hereunder solely in reliance on its own evaluation of the Purchase Price. With the exception of any representations and warranties set forth in Section 4 of this Agreement, Seller is not relying on (i) any information provided to Seller or written or oral representations, whether express or implied, by Purchaser or its respective members, shareholders, officers, directors, employees, agents or affiliates or (ii) any information provided to Seller by Purchaser or its respective shareholders, officers, directors, employees, agents or affiliates in assessing the reasonableness of the Purchase Price. Seller acknowledges that Purchaser expressly disclaims and has not made any warranties, guarantees, promises, or representations of any kind whatsoever regarding the value of the Asset and the anticipated recovery and/or timing of recovery on the Asset.
- 3.9 Information. Seller acknowledges that because a Settlement Event had not taken place prior to the payment of the Purchase Price, the value of the Asset and the final recovery on the Asset may not be determined with certainty by Seller or Purchaser as of the time of execution of this Agreement. Seller further acknowledges that Purchaser may possess material information not known to Seller, and Seller agrees that Purchaser shall have no liability with respect to the non-disclosure of any such information.
- 3.10 Expectation of Return. Seller acknowledges that Purchaser's sole intention and expectation in entering into this Agreement is to earn a positive financial return on the

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Asset. As such, Seller understands that Purchaser's recovery on the Asset may exceed the Purchase Price.

- 3.11 Own Advisors. Seller acknowledges that it has had an opportunity to consult with an attorney and/or other relevant professional advisors prior to the execution of this Agreement. Seller acknowledges that Purchaser has advised it that it should seek such counsel.
- 3.12 No Fiduciary or Confidential Relationship. Seller acknowledges that Seller and Purchaser are not in a fiduciary, confidential, agency or otherwise special relationship, including one of trust, confidence or privity, and that Seller and Purchaser are each acting for their own self-interest.

SECTION 4 – REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as follows:

- 4.1 Organization. Purchaser is a limited liability company, validly existing and in good standing under the laws of the State of Delaware.
- 4.2 Authorization. Purchaser has the requisite power and authority to purchase the Asset from Seller, execute and deliver this Agreement, and to perform the transactions contemplated hereby or thereby.
- 4.3 Due Execution; Validly Binding. This Agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights in general and subject to general principles of equity.
- 4.4 No Litigation. There is no suit, action, litigation or other proceeding or governmental or administrative investigation or inquiry, pending or threatened, against Purchaser that could prevent or prohibit Purchaser from purchasing the Asset or from otherwise complying in full with the provisions of this Agreement. Transfer of the Asset pursuant to this Agreement will not breach, violate or otherwise contravene any applicable law, statute, regulation or contractual term.
- 4.5 Purchaser Solvent. That Purchaser is solvent and has the funds available to pay the Purchase Price as provided in section 2.2 herein.
- 4.6 Disclaimers: No Representations or Warranties. Purchaser expressly disclaims and does not make any warranties, guarantees, promises, or representations of any kind whatsoever regarding the Asset, including, but not limited to: (i) the value of the Asset; and (ii) the anticipated recovery or timing of recovery on the Asset. Purchaser has advised Seller that it should consult with an attorney and/or other relevant professional advisors prior to the execution of this Agreement.

EXECUTION COPY

- 4.7 Independent Investigation. Aside from Representations or Warranties contained herein, Purchaser acknowledges that it has conducted its own independent evaluation of the transactions contemplated under this Agreement. Purchaser further acknowledges that it has had an opportunity to conduct its own independent investigation regarding the Litigation, the possibility of a Settlement Event taking place, and the Asset. Purchaser has had an opportunity to review the documents and information available through publicly available sources of information.
- 4.8 No Reliance. Aside from Representations or Warranties contained herein, Purchaser has conducted an independent evaluation of the transactions contemplated under this Agreement. Purchaser has decided to enter into this Agreement and undertake the transactions contemplated hereunder solely in reliance on its own evaluation, based on such information as it has deemed appropriate under the circumstances. With the exception of any representations and warranties set forth in Section 3 of this Agreement, Purchaser is not relying on (i) any information provided to Purchaser or written or oral representations, whether express or implied, by Seller or its agents or affiliates, or (ii) any information provided to Purchaser by Seller or its agents or affiliates. Purchaser acknowledges that Seller expressly disclaims and has not made any warranties, guarantees, promises, or representations of any kind whatsoever regarding the Asset, including, but not limited to: (i) the value of the Asset, and (ii) the anticipated recovery and/or timing of recovery on the Asset.
- 4.9 Information. Aside from Representations or Warranties contained herein, Purchaser acknowledges that, because a Settlement Event had not taken place prior to the payment of the Purchase Price, the value of the Asset and the final recovery on the Asset may not be determined with certainty by Seller or Purchaser as of the time of execution of this Agreement. Purchaser further acknowledges that Seller may possess material information not known to it. Purchaser agrees that Seller shall have no liability with respect to the non-disclosure of any such information.
- 4.10 Expectation of Return. Purchaser understands that Purchaser's recovery on the Asset may not exceed the Purchase Price.
- 4.11 Own Advisors. Purchaser acknowledges that it has had an opportunity to consult with an attorney and/or other relevant professional advisors prior to the execution of this Agreement. Purchaser acknowledges that Seller has advised it that it should seek such counsel.
- 4.12 No Fiduciary or Confidential Relationship. Purchaser acknowledges that Seller and Purchaser are not in a fiduciary, confidential, agency or otherwise special relationship, including one of trust, confidence or privity, and that Seller and Purchaser are each acting for their own self-interest.

SECTION 5 - COVENANTS OF SELLER

Seller covenants to Purchaser as follows:

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- 5.1 Further Assurances. Seller will reasonably provide, duly execute or deliver, or cause to be provided, duly executed or delivered, to Purchaser such further information and instruments reasonably available to it or under its possession, custody or control and do and cause to be done such further acts as may be reasonably necessary or proper to respond to any audit or inquiry by the CA, Lead Counsel or the District Court regarding the Asset.
- 5.2 Waiver of Claims. To the maximum extent permitted by law, Seller will not assert and hereby waives any and all claims against Purchaser or any of its members, officers, directors, employees, agents or affiliates with respect to this Agreement, any Ancillary Agreement or the transactions contemplated hereby or thereby based on any claim that Purchaser had superior or additional information material to a decision to sell or buy the Asset.
- 5.3 Covenant Not To Sue. Seller will not commence or maintain any suit thereon against Purchaser or any of its shareholders, officers, directors, employees, agents or affiliates with respect to this Agreement, or the transactions contemplated hereby, whether at law or in equity, based on any claim that Purchaser had superior or additional information material to a decision to sell or buy the Asset.
- 5.4 Payment Delivery. If a CA mistakenly sends total or partial payment directly to Seller, Seller will immediately endorse such payment to Purchaser and deliver the payment to Purchaser by personal delivery or by first-class mail, certified, return receipt requested, postage prepaid and addressed to:

Cascade Settlement Services
100 Shoreline Highway, Suite B-125
Mill Valley, CA 94941
Attn: John Chilcott

SECTION 6 - GENERAL

- 6.1 Severability. In the event that any provision herein becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.
- 6.2 Costs. The Parties shall each pay their own costs and expenses (including attorney's fees and accountants' fees) incurred or to be incurred in negotiating, preparing and executing this Agreement.
- 6.3 Entire Agreement. This Agreement represents the entire agreement and understanding between the Parties regarding the sale and purchase of the Asset and supersedes any and all prior representations, warranties agreements and understandings, whether written or oral, concerning the sale and/or purchase of the Asset.
- 6.4 No Oral Modification. This Agreement may only be amended in writing signed by both Parties.

EXECUTION COPY

- 6.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law rules, principles or provisions of such state or of any other state.
- 6.6 Headings. Section headings are for convenient reference only and will not affect the meaning or have any bearing on the interpretation of any provision of this Agreement.
- 6.7 Counterparts. This Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement. If so signed, the Agreement becomes effective when both signature pages are attached.
- 6.8 Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or on behalf of the Parties hereto.
- 6.9 References. Seller agrees that Purchaser may disclose Seller's identity and the Purchase Price only to prospective sellers in an effort to promote Purchaser's business. No other disclosures for any other reason are permitted without further written permission from Seller.
- 6.10 Notices. All notices, requests, demands or any other communication made under, pursuant to, or in accordance with this Agreement, except for normal day-to-day business communications, which may be made orally or in a writing, shall be in writing and shall either be delivered personally or deposited in the United States mail and sent by first-class mail, certified, return receipt requested, postage prepaid and properly addressed as follows:

<p>If to Purchaser:</p> <p>Cascade Settlement Services LLC 100 Shoreline Highway, Suite B-125 Mill Valley, CA 94941 Attn: John Chilcott</p>	<p>If to Seller:</p> <p>Katie S. Goodman, Liquidation Trustee GGG Partners LLC 5883 Glenridge Drive, Suite 160 Atlanta, GA 30328</p>
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or to such other address(es) as a Party hereto may indicate to the other Party in the manner provided for herein. Notices given by mail shall be deemed effective and complete forty-eight (48) hours following the time of posting and mailing, and notices delivered personally shall be deemed effective and complete at the time of delivery and the obtaining of a signed receipt.

[Signature Page Follows]

IN WITNESS WHEREOF, the Agreement has been executed by the Parties as of the date and year provided above.

CASCADE SETTLEMENT SERVICES LLC

LIQUIDATING TRUST for THE CLIFFS CLUB & HOSPITALITY GROUP, INC., *et al.*

By: John Chilcott

By: Katie S. Goodman

By: _____

Name: John Chilcott

Title: Chief Executive Officer

By: _____

Name: Katie S. Goodman

Title: Liquidation Trustee

Exhibit A
to
Asset Purchase and Sale Agreement

Form of Notice of Assignment

[attached]

[Form of Notice of Assignment]

To: Claims Administrator of Any Settlement Arising from **IN RE: PAYMENT CARD INTERCHANGE FEE AND MERCHANT-DISCOUNT ANTITRUST LITIGATION** (Case Number 1:05-md-01720-JG-JO)

This Notice of Assignment transfers and assigns to **CASCADE SETTLEMENT SERVICES LLC** (“Purchaser”), pursuant to a Bankruptcy Court Order dated _____ (attached as Exhibit A), all of **THE CLIFFS CLUB & HOSPITALITY GROUP, INC., et al.’s** (“Company”) right, title and interest in and to or associated with, or connected in any manner to, any settlement arising from the class action litigation of In Re: Payment Card Interchange Fee and Merchant-Discount Antitrust Litigation (Case No 1:05-md-01720-JG-JO) (the “Settlement”), for the following entities:

FILING ENTITY NAME	United States Bankruptcy Court for the District of South Carolina Case Number
The Cliffs Club & Hospitality Group, Inc.	12-01220
CCHG Holdings, Inc.	12-01223
The Cliffs at Mountain Park Golf & Country Club, LLC	12-01225
The Cliffs at Keowee Vineyards Golf & Country Club, LLC	12-01226
The Cliffs at Walnut Cove Golf & Country Club, LLC	12-01227
The Cliffs at Keowee Falls Golf & Country Club, LLC	12-01229
The Cliffs at Keowee Springs Golf & Country Club, LLC	12-01230
The Cliffs at High Carolina Golf & Country Club, LLC	12-01231
The Cliffs at Glassy Golf & Country Club, LLC	12-01234
The Cliffs Valley Golf & Country Club, LLC	12-01236
Cliffs Club & Hospitality Service Company, LLC	12-01237

The rights assigned to Purchaser include, but are not limited to, the Company’s right to file a claim and to challenge any and all estimates for payment of that claim.

Purchaser is now the legal and equitable owner of all rights associated with the Settlement. You should deal directly with Purchaser or its duly appointed agents on all matters pertaining to the Company’s rights in the Settlement. Further, in accordance with the Assignment, any and all payments relating to the Settlement should be made payable to Purchaser and sent to the following address:

Cascade Settlement Services LLC
 100 Shoreline Highway, Suite B-125
 Mill Valley, CA 94941
 Attn: John Chilcott

Moreover, any and all correspondence, documents or any other communications pertaining to the Settlement should be directed to Purchaser at the above address.

Company Name: **The Cliffs Club & Hospitality Group, Inc., et al.**
Company Address: 3598 Highway 11
Travelers Rest, SC 29690

Date: _____, 2012

By: _____
Name: Katie S. Goodman
Title: Liquidation Trustee

Exhibit B
to
Asset Purchase and Sale Agreement

Form of Authorization to Obtain Transactional Data

[attached]

[Form of Authorization to Obtain Transactional Data]



AUTHORIZATION TO OBTAIN TRANSACTIONAL DATA

This Authorization to Obtain Transactional Data (“Authorization”) is made on _____, 2012 between **THE LIQUIDATING TRUST FOR THE CLIFFS CLUB & HOSPITALITY GROUP, INC. n/k/a CCHG LIQUIDATION CO., et al.**¹ (“Client”) and Cascade Settlement Services, LLC (“Cascade”), a Delaware limited liability company.

Client has assigned to Cascade all rights to any settlement arising from In re: Payment Card Interchange Fee and Merchant-Discount Antitrust Litigation (Case Number 1:05-md-01720-JG-JO).

As used in this Authorization, (a) the term “Transactional Data” means data from or related to credit card or debit card transactions in which Client received payment for goods sold or services provided, and (b) the term “Processors” means Client’s acquiring banks, credit card processors, any other entity involved in processing or recording credit card or debit card transactions, and any third party holding or possessing any or all of Client’s Transactional Data.

Client hereby directs and authorizes all Processors to release and provide to Cascade any and all Transactional Data. Client hereby authorizes Cascade to request, demand, obtain and receive from any source all of Client’s Transactional Data, including, but not limited to, the Merchant Identification Information listed on and attached hereto as Exhibit A.

[signature follows]

¹ The debtors in these cases (now substantively consolidated as the single debtor, CCHG Liquidation Co.), 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. n/k/a CCHG Liquidation Co. (6338) (12-01220); CCHG Holdings, Inc. (1356) (12-01223); The Cliffs at Mountain Park Golf & Country Club, LLC n/k/a CCHG Liquidation Co. II, LLC (2842) (12-01225); The Cliffs at Keowee Vineyards Golf & Country Club, LLC n/k/a CCHG Liquidation Co. III, LLC (5319) (12-01226); The Cliffs at Walnut Cove Golf & Country Club, LLC n/k/a CCHG Liquidation Co. IV, LLC (9879) (12-01227); The Cliffs at Keowee Falls Golf & Country Club, LLC n/k/a CCHG Liquidation Co. V, LLC (3230) (12-01229); The Cliffs at Keowee Springs Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VI, LLC (2898) (12-01230); The Cliffs at High Carolina Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VII, LLC (7576) (12-01231); The Cliffs at Glassy Golf & Country Club, LLC n/k/a CCHG Liquidation Co. VIII, LLC (6559) (12-01234); The Cliffs Valley Golf & Country Club, LLC n/k/a CCHG Liquidation Co. IX, LLC (6486) (12-01236); and Cliffs Club & Hospitality Service Company, LLC n/k/a CCHG Liquidation Co. X, LLC (9665) (12-01237).

The undersigned has executed this Authorization as of the date set forth above.

Client: Liquidating Trust for the bankruptcy estates of The Cliffs Club
& Hospitality Group, Inc., *et al.* (substantively consolidated)

By: _____
Name: Katie S. Goodman
Title: Liquidation Trustee

Cascade acknowledges receipt of this Authorization.

Cascade Settlement Services, LLC

By: _____
Name: John Chilcott
Title: Chief Executive Officer

Exhibit B – Notice of Assignment

To: Claims Administrator of Any Settlement Arising from **IN RE: PAYMENT CARD INTERCHANGE FEE AND MERCHANT-DISCOUNT ANTITRUST LITIGATION** (Case Number 1:05-md-01720-JG-JO)

This Notice of Assignment transfers and assigns to **CASCADE SETTLEMENT SERVICES LLC** (“Purchaser”), pursuant to a Bankruptcy Court Order dated _____ (attached as Exhibit A), all of **THE CLIFFS CLUB & HOSPITALITY GROUP, INC., et al.’s** (“Company”) right, title and interest in and to or associated with, or connected in any manner to, any settlement arising from the class action litigation of In Re: Payment Card Interchange Fee and Merchant-Discount Antitrust Litigation (Case No 1:05-md-01720-JG-JO) (the “Settlement”), for the following entities:

FILING ENTITY NAME	United States Bankruptcy Court for the District of South Carolina Case Number
The Cliffs Club & Hospitality Group, Inc.	12-01220
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The Cliffs at Keowee Falls Golf & Country Club, LLC	12-01229
The Cliffs at Keowee Springs Golf & Country Club, LLC	12-01230
The Cliffs at High Carolina Golf & Country Club, LLC	12-01231
The Cliffs at Glassy Golf & Country Club, LLC	12-01234
The Cliffs Valley Golf & Country Club, LLC	12-01236
Cliffs Club & Hospitality Service Company, LLC	12-01237

The rights assigned to Purchaser include, but are not limited to, the Company’s right to file a claim and to challenge any and all estimates for payment of that claim.

Purchaser is now the legal and equitable owner of all rights associated with the Settlement. You should deal directly with Purchaser or its duly appointed agents on all matters pertaining to the Company’s rights in the Settlement. Further, in accordance with the Assignment, any and all payments relating to the Settlement should be made payable to Purchaser and sent to the following address:

Cascade Settlement Services LLC
 100 Shoreline Highway, Suite B-125
 Mill Valley, CA 94941
 Attn: John Chilcott

Moreover, any and all correspondence, documents or any other communications pertaining to the Settlement should be directed to Purchaser at the above address.

Company Name: **The Cliffs Club & Hospitality Group, Inc., et al.**
Company Address: 3598 Highway 11
Travelers Rest, SC 29690

Date: _____, 2012

By: _____
Name: Katie S. Goodman
Title: Liquidation Trustee

PROPOSED ORDER

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

Case No. 12-01220

**ORDER PURSUANT TO SECTIONS 363(b), (f) AND (m) OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULES 2002 AND 6004 AUTHORIZING
THE TRUSTEE TO SELL THE DEBTORS' RIGHTS TO
PAYMENTS TO WHICH THE DEBTORS MAY BE ENTITLED PURSUANT
TO THE CLASS ACTION INTERCHANGE LITIGATION FREE AND
CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES**

The relief set forth on the following pages, for a total of 7 pages including this page is hereby **ORDERED**.

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

In re:

CCHG Liquidation Co.,

Debtor.

CHAPTER 11

Case No. 12-01220

Substantively Consolidated

**ORDER PURSUANT TO SECTIONS 363(b), (f) AND (m) OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULES 2002 AND 6004 AUTHORIZING
THE TRUSTEE TO SELL THE DEBTORS' RIGHTS TO
PAYMENTS TO WHICH THE DEBTORS MAY BE ENTITLED PURSUANT
TO THE CLASS ACTION INTERCHANGE LITIGATION FREE AND
CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES**

Upon the Motion, dated December 3, 2012 ("Motion"),¹ of Katie S. Goodman, as Liquidation Trustee of the Liquidating Trust for the bankruptcy estates of The Cliffs Club & Hospitality Group, Inc., *et al.* (now substantively consolidated with CCHG Liquidation Co.) ("Trustee") pursuant to section 363 of title 11 of the United States Code ("Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") for authorization to sell the rights of The Cliffs Club & Hospitality Group, Inc., *et al.* ("Debtors") to the Asset to Cascade Settlement Services, LLC ("Purchaser") free and clear of all liens, claims and encumbrances, all as more fully set forth in the Motion pursuant to the Sale Agreement annexed thereto as Exhibit A; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § § 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

proper notice of the Motion having been provided; and it appearing that no other notice need be provided; and a hearing (the "Hearing") on the Motion having been held before the Court on January 18, 2013; and upon the record of the Hearing; and such relief being in the best interest of the substantively consolidated Debtor, its estate and creditors; and any objections to the Motion having been resolved, withdrawn or otherwise overruled by this Court; and after due deliberation, and sufficient cause appearing therefor, it is:

FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. Proper, timely, adequate and sufficient notice of the Motion has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, and 9014 and no other or further notice of the Motion or sale shall be required.

D. The Trustee has the authority to execute the Agreement and other documents contemplated thereby.

E. Sound business reasons exist for the Sale pursuant to the Agreement. Entry into the Agreement and consummation of the transactions contemplated thereby constitute the exercise by the Trustee of sound business judgment and such acts are in the best interest of the estates and creditors. The Court finds that the Trustee has articulated good and sufficient business reasons justifying the Sale pursuant to Bankruptcy Code sections 105 and 363. Such

business reasons include, but are not limited to, the fact that the Agreement constitutes the highest and best offer for the Asset.

F. The Agreement was negotiated, proposed and entered into by the Trustee and Purchaser without collusion, in good faith, and from arm's-length negotiating positions. Neither the Purchaser nor the Trustee have engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code section 363(n).

G. The consideration provided by the Purchaser for the Asset is the highest or otherwise best offer received by the Trustee and is fair and reasonable.

H. A sale of the Asset other than one free and clear of liens, claims and encumbrances would impact the estate materially and adversely and will yield substantially less for the estate. As a result, the Sale negotiated in the Agreement is in the best interests of the substantively consolidated estate and its creditors.

I. A reasonable opportunity to be heard on the Motion was afforded to all parties in interest.

J. The Purchaser is not an "insider" of the Debtors or Trustee as defined in Bankruptcy Code section 101.

K. The transfer of the Asset to the Purchaser will be a legal, valid, and effective transfer of the Asset and will vest the Purchaser with all right, title and interest of the Trustee and Debtors' estates to the Asset free and clear of all liens, claim and encumbrances, including those that purport to give any party any right to terminate the Trustee's, Debtors', or Purchaser's rights to the Asset.

L. The Trustee may sell the Asset free and clear of all liens and claims of any kind because one or more of the standards set forth in Bankruptcy Code section 363(f) has been satisfied.

BASED ON THE PROCEEDINGS HAD HEREIN, IT IS:

ORDERED that the Motion is GRANTED; and it is further

ORDERED than any objections to the Motion, not previously withdrawn, are overruled; and it is further

ORDERED that the Sale Agreement, and all of its terms and conditions are approved in their entirety; and it is further

ORDERED that pursuant to section 363(b) of the Bankruptcy Code, the Trustee is authorized to sell the rights to the Asset to the Purchaser for the consideration described in the Motion; and it is further

ORDERED that pursuant to section 363(f) of the Bankruptcy Code, the sale of the Debtors' rights to the Asset to the Purchaser ("Sale") shall be free and clear of any and all liens, claims and encumbrances, with such liens, claims and encumbrances to attach to the proceeds of the Sale with the same force, effect, and priority as such liens, claims and encumbrances have on the estates' rights to the Asset, as appropriate, subject to the rights and defenses of the Debtors and any party in interest with respect thereto; and it is further

ORDERED that pursuant to Bankruptcy Code section 363(b), the Trustee is authorized and directed to perform the obligations herein and comply with the terms of the Sale Agreement, and consummate the Sale, pursuant to and in accordance with the conditions of the Sale Agreement; and it is further

ORDERED that the Trustee is authorized to execute and deliver, and empowered to perform under, consummate and implement the Sale Agreement, together with all additional instruments and documents that may be reasonably necessary to implement the Sale Agreement, and take all further actions that may be reasonably required for the purpose of assigning, transferring, conveying and conferring the Asset to the Purchaser, or as may be necessary or appropriate to the performance of the obligations contemplated by the Sale Agreement; and it is further

ORDERED that the Purchaser is granted the protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code; and it is further

ORDERED that the transfer of the Asset to the Purchaser pursuant to the Sale Agreement constitutes a legal, valid, and effective transfer of the Asset; and shall vest the Purchaser with all right, title and interest of the Debtors and their estates in and to the Asset; it is further

ORDERED that the failure specifically to include any particular provision of the Sale Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Sale Agreement is authorized and approved in its entirety; and it is further

ORDERED that the fourteen-day stay under Bankruptcy Rule 6004(h) is waived.

AND IT IS SO ORDERED.

Prepared and presented by:

/s/ Däna Wilkinson
Däna Wilkinson
District Court I.D. No. 4663
LAW OFFICE OF DÄNA
WILKINSON
365-C East Blackstock Road
Spartanburg, SC 29301
864.574.7944 (Telephone)
864.574.7531 (Facsimile)
danawilkinson@danawilkinsonlaw.com

-and-

/s/ J. Michael Levensgood
Gary W. Marsh
Georgia Bar No. 471290
J. Michael Levensgood
Georgia Bar No. 447934
Bryan E. Bates
Georgia Bar No. 140856
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Trustee*