

## TERMS AND CONDITIONS OF USE

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### THE CLIFFS BROKER PORTAL SERVICE

When using The Cliffs Broker Portal Service, Brokers and Brokerage Companies (collectively, the "Broker Parties") should be aware that the following Terms and Conditions of Use shall apply at all times. These Terms and Conditions of Use have been developed by The Cliffs Communities, Inc. and its affiliates (the "Cliffs") so as to ensure that all Broker Parties utilizing The Cliffs Broker Portal Service have a high-quality service that is being used appropriately by all Broker Parties. By accessing and utilizing an account on The Cliffs Broker Portal Service, Broker Parties expressly agree to each of the terms and conditions set forth in this document and any revisions hereto that may be promulgated from time to time by the Cliffs as posted on this website. The Cliffs Broker Portal Service is committed to enforcing the policies set forth in these Terms and Conditions of Use. Should you wish to report an apparent violation, please notify us at [abuse@cliffscommunities.com](mailto:abuse@cliffscommunities.com).

#### 1. General Terms and Policies

- A. **Background.** The Cliffs Broker Portal Service is operated by a private third-party company providing a website that may be used to send electronic mail or request documents to be sent via United States mail or other delivery service subject to the terms and conditions set forth herein.
- B. **Authorized Users.** The Cliffs Broker Portal Service is provided only to authorized Broker Parties. Any use of The Cliffs Broker Portal Service is subject to the restrictions set forth herein. By using The Cliffs Broker Portal Service, you agree to be bound by all of the terms and conditions set forth herein. If you do not agree to be bound by these terms and conditions, you must cease your use of The Cliffs Broker Portal Service immediately and may not thereafter use or attempt to use The Cliffs Broker Portal Service.
- C. **Non-Exclusive Rights.** In the event that a Broker Party qualifies as an authorized user for The Cliffs Broker Portal Service, the Cliffs grants to such Broker Party a non-exclusive right to access, use, and display The Cliffs Broker Portal Service on any computers or other electronic display devices of which Broker Party is a primary user. You may not assign, sub-license, or transfer any rights or obligations without the express written consent of the Cliffs. The Cliffs may terminate or suspend these non-exclusive rights with respect to any Broker Party at anytime, with or without cause or prior written notice.
- D. **Applicability.** If a Broker Party is an individual user, these terms and conditions apply to all persons who gain access through your account. If a Broker Party is a commercial user, these terms and conditions apply to all of Broker Party's employees, agents, brokers, and/or any other person who gains access through the Broker Party's account or via the Broker Party's physical connection. In either instance, a violation of these terms and conditions by anyone using a Broker Party's account or physical connection shall be imputed to the Broker Party directly.
- E. **Intellectual Property.** The Broker Parties shall maintain no right or license under these Terms and Conditions of Use or any other agreement to utilize any intellectual property or other proprietary information, service marks, or other intangible property of any kind or nature belonging to the Cliffs. Although the Broker Parties, through their use of The Cliffs Broker Portal Service, may come into contact with certain intellectual property owned by the Cliffs, the Broker Parties are permitted only to send targeted correspondence to individual mail recipients through The Cliffs Broker Portal Service and may not, under any circumstances, use correspondence generated by or through The Cliffs Broker Portal Service to submit or circulate non-individualized correspondence or correspondence that is disseminated to parties not having explicitly expressed a direct interest in purchasing a Cliffs Property. The Broker Parties shall not be entitled to represent their status as a "Cliffs Preferred Broker" or any variation thereof through any print, radio, or televised medium.

#### 2. Penalties and Charges

- A. General. In the event of abuse or other misconduct by a Broker Party, the Broker Party shall be liable to the Cliffs for certain penalties and charges, regardless of whether the Cliffs incurs any direct damages or losses. In the event that the conduct of a Broker Party results in the Cliffs having to undertake a bulk email cleanup (i.e. spam cleanup), the responsible Broker Party shall be charged a flat fee of \$300.00, plus \$5.00 per message sent, plus \$100.00 per complaint received by the Cliffs.
- B. Changes to Penalties and Charges. The Cliffs Broker Portal Service reserves the right to modify its penalties and charges at any time. Any increase or decrease in penalties and charges shall be posted to this website at least five (5) days in advance of the effective date of such change. The Cliffs Broker Portal Service may also provide written or electronic notice to Broker Parties five (5) days in advance of any change to penalties or charges.
- C. Unconditional Right to Set-Off. Any penalties and charges due to the Cliffs by a Broker Party under this Section 2, to the extent unpaid by a Broker Party, may be set-off against any Referral Payment due to a Broker Party under the Preferred Broker Referral Agreement.
- D. Non-Exclusivity of Remedy. The penalties and charges set forth in this Section 2 shall in no event be considered the exclusive remedy of the Cliffs for any misconduct on the part of a Broker Party, and the Cliffs shall maintain all other rights at law or equity against a Broker Party for indemnification, direct damages, or otherwise.

### 3. Termination and Suspension

- A. General. The Broker Parties agree to comply with these terms and conditions, as well as any applicable rules, regulations, and policies of any network, bulletin board, newsgroup, website or Internet Service Provider accessed through The Cliffs Broker Portal Service. Any violation of these terms and conditions or other rules, regulations, or policies noted above may serve as cause for the Cliffs or its agents to suspend or terminate a Broker Party's account. The Broker Parties agree that the Cliffs or its agents may, with or without notice, suspend or terminate a Broker Party's account for any reason whatsoever.
- B. Prohibited Conduct. The Broker Parties are prohibited from utilizing The Cliffs Broker Portal Service in any manner that violates a federal, state, or local law, regulation, or ordinance. Additionally, the following misconduct is specifically prohibited:
  - 1. Using The Cliffs Broker Portal Service in a manner that constitutes a violation of any applicable statute, law, court order, tariff, regulation, or treaty (including, but not limited to, intellectual property, communications, privacy, criminal and international law).
  - 2. Engaging in improper use or distribution of electronic mail, sending unsolicited mass or commercial email (i.e. "spamming"), or having third parties send out commercial emails on any Broker Party's behalf. In the absence of positive, verifiable proof to the contrary, the Cliffs shall consider complaints by recipients of emails to be de-facto proof that the recipient did not subscribe or otherwise request the email(s) about which a complaint was generated.
  - 3. Using The Cliffs Broker Portal Service in an attempt to break security, or so as to actually break security of any computer network (including The Cliffs Broker Portal Service itself), or to attempt/make unauthorized entry into any machine/equipment accessible on the network or to access an account of which the Broker Party is not the owner or a communication on which the Broker Party is not the sender or intended recipient.
  - 4. Using The Cliffs Broker Portal Service in such a way as to forge headers/addresses in Internet Protocol (IP) packets and/or electronic mail or USENET postings or using any other method to disguise the sender's identity.
  - 5. Posting commercial messages to a USENET group where the posting is not approved by the specific USENET group in its charter, or mass postings to large numbers of USENET groups.

6. Using The Cliffs Broker Portal Service for mail-bombing, which is defined as the sending of mass amounts of email to one recipient, with the intent to render that recipient's account and/or the electronic system serving that account dysfunctional.
7. Using The Cliffs Broker Portal Service to engage in any form of Denial of Service attacks, which are defined as overburdening a recipient computer system by sending a high volume of spurious data that effectively impedes or totally disables functionality of the recipient system(s) or the Internet, and connectivity, including but not limited to syn flood attacks (flooding a router or server to disable it) and smurfing (forging an IP address to impersonate someone else).
8. Using The Cliffs Broker Portal Service to add or attempt to add addresses to any mailing list without the explicit positive consent of the addressee(s), or using The Cliffs Broker Portal Service to forward or post "chain letters" (multiple forwarding) of any type.
9. Engaging in harassment, whether through language, frequency, or size of messages, or furnishing false data on any sign-up form, contract, or online application.
10. Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network, and the Cliffs specifically considers the practice of "port scanning" to be in violation of these Terms and Conditions of Use.
11. Unauthorized monitoring of data or traffic on any network or system without the express authorization of the owner of the system or network.
12. Failure to immediately apply corrective action when advised that one of your computer systems has been compromised or is the source of an unacceptable use (the definition of immediately will be supplied by The Cliffs Broker Portal Service at the time of notification based on severity of the infection or situation).
13. Using The Cliffs Broker Portal Service for pornographic or obscene content, or utilizing The Cliffs Broker Portal Service to publish or distribute fake or fraudulent information or representations.

#### 4. Security

The Broker Parties agree not to access or attempt to access private areas of The Cliffs Broker Portal Service. The Broker Parties further agree to notify The Cliffs Broker Portal Service as soon as a Broker Party becomes aware of an unauthorized use of its account and/or any breach or attempted breach of security on The Cliffs Broker Portal Service. The Broker Parties understand and agree that their account(s) or physical connection(s) may be arbitrarily filtered, limited, or terminated if the Cliffs is unable to contact the Broker Party relative to a violation of any policy enumerated within these Terms and Conditions of Use or if the Broker Party fails to apply corrective action when so contacted. Such filters may be removed when a Broker Party demonstrates that the affected system has been corrected.

#### 5. Intellectual Property

The Cliffs Broker Portal Service may examine or review messages, files, or other materials that are accessible through, pass through, or reside on The Cliffs Broker Portal Service. If the Cliffs is informed of an alleged copyright or trademark infringement on The Cliffs Broker Portal Service, the Cliffs will attempt to notify the affected Broker Party of those allegations and secure a response. The Cliffs may, at its sole discretion, remove on a temporary or permanent basis materials that the Cliffs believes may create, constitute, or contribute to copyright or trademark infringements or any other violations of federal or state law. The Broker Parties agree not to assert any claims against the Cliffs for any such removal.

6. Liability

The Broker Parties agree that the use of The Cliffs Broker Portal Service is at Broker Party's own risk. Except for information, products, or services clearly identified as being supplied by The Cliffs Broker Portal Service, neither the Cliffs nor any of its affiliates controls, provides, operates, or is in any way responsible for any information, products, or services accessible through The Cliffs Broker Portal Service, including, but not limited to, computer viruses or worms and any information that is controversial, sexually explicit, or offensive to a Broker Party or users for whom a Broker Party may be responsible. The Cliffs is not responsible for the accuracy or content of such material, and the Broker Parties agree that the Cliffs is not responsible for any loss or damage caused by a Broker Party's use of, or reliance on, such material. The Broker Parties also agree that they are solely responsible for using any available screening software or other methods of limiting access (specifically including the access of minors) to any material that a Broker Party may find objectionable.

The Broker Parties agree to be liable for any damages or loss of service that results in damages to The Cliffs Broker Portal Service as a result of any spamming or other violations of the terms and conditions set forth herein. These damages include, but are not limited to the following: system shut downs, retaliatory attacks or data flooding, and loss of peering arrangements.

7. Notification

The Cliffs will attempt to contact you in the event of service termination due to any of the provisions of this document. The Cliffs will, at its sole discretion, determine whether notification prior to service termination is possible; however, the security of other network users is paramount and takes precedence over all other issues. The Cliffs will attempt to verbally notify a Broker Party using whatever contact information is currently on record.

8. Legal

- A. No Warranties. THE CLIFFS BROKER PORTAL SERVICE MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF TITLE, NON-INFRINGEMENT, AND MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE CLIFFS BROKER PORTAL SERVICE, OR ANY SOFTWARE OR OTHER MATERIAL AVAILABLE THROUGH THE CLIFFS BROKER PORTAL SERVICE. NO ORAL ADVICE OR INFORMATION GIVEN BY THE CLIFFS OR ITS EMPLOYEES SHALL CREATE A WARRANTY. THE SERVICE AND ANY SOFTWARE PROVIDED TO THE BROKER PARTIES BY THE CLIFFS ARE PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS; THE CLIFFS DOES NOT WARRANT THAT THE CLIFFS BROKER PORTAL SERVICE WILL BE ERROR-FREE AND/OR UNINTERRUPTED, OR THAT DEFECTS WILL BE CORRECTED. THE CLIFFS DOES NOT GUARANTEE THE SECURITY OR BACK-UP OF YOUR DATA STORED ON THE CLIFFS BROKER PORTAL SERVICE.
- B. Limitation of Liability and Exclusivity of Remedy. Subject to applicable law and notwithstanding any damages that a Broker Party may incur for any reason whatsoever (including without limitation, all damages referenced above and all direct or general damages), the Cliffs shall maintain no liability to a Broker Party under this document or otherwise for any damages or losses whatsoever, regardless of the circumstances.
- C. Indemnification. The Broker Parties, jointly and severally, hereby agree to indemnify and hold harmless the Cliffs along with its employees, agents, and affiliates, from any and all costs, claims, losses, and damages of any kind or nature arising from the misconduct or negligence of one or more of the Broker Parties with respect to their use of The Cliffs Broker Portal Service. The indemnification provisions contained in these Terms and Conditions of Use and the allocation of risk provided hereunder have been specifically bargained for between the parties and absent such indemnification provisions, the Cliffs would not have provided the Broker Parties with access to The Cliffs Broker Portal Service. The indemnification provided to the Cliffs under these Terms and Conditions of Use shall apply regardless of any negligence or contributory negligence on the part of the Cliffs.

- D. Privacy. The Cliffs is committed to following the controlling federal, state, and local laws pertaining to privacy and data access. The Cliffs will not provide names, addresses, telephone numbers, email addresses, or other personally identifiable information on any Broker Party to any third party without prior permission from that Broker Party, or under an appropriate court or administrative directive. The Cliffs may access and use individual Broker Party information in the operation and purpose of The Cliffs Broker Portal Service and as necessary to protect The Cliffs Broker Portal Service. The Cliffs may provide aggregate data on Broker Parties to third parties.
- E. Amendment and Changes. The Cliffs may change at any time and for any reason these Terms and Conditions of Use. The revised Terms and Conditions of Use shall be posted to and made available on this website and the revised Terms and Conditions of Use shall be binding on the Broker Parties as soon as they are posted. If a Broker Party does not wish to continue subscribing to The Cliffs Broker Portal Service under any revised Terms and Conditions of Use, the Broker Party should inform the Cliffs at once, and the account will be closed.
- F. Waiver of Certain Damages. The Cliffs shall not, under any circumstances, be liable to the Broker Parties for any loss of profits, loss of contracts, loss of opportunity, loss of business, loss or depletion of goodwill, increased overhead, management time, or any other type of special, indirect, consequential, or punitive damages of any nature whatsoever (including loss or damage suffered by the Broker Parties as a result of an action brought by any third party) even if such loss was reasonably foreseeable or the Cliffs had been advised of the possibility of the Broker Parties incurring the same.
- G. Governing Law and Forum. These Terms and Conditions of Use along with all matters pertaining to these Terms and Conditions of Use shall be interpreted and adjudicated under the laws of the State of South Carolina, without respect to any conflict of law principles. Moreover, to the extent that the arbitration provisions contained in these Terms and Conditions of Use do not apply to a particular dispute between the parties, then all parties hereby submit to the exclusive jurisdiction of the state and federal courts of Greenville County, South Carolina and waive any right to object or otherwise take issue with the convenience of such forum. The Broker Parties agree that they have significant business contacts with the Greenville County, South Carolina forum such that the exercise of personal jurisdiction by its courts would not be unfair or unduly prejudicial.
- H. Arbitration. ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OF USE OR THE RELATIONSHIP BETWEEN THE PARTIES SHALL BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

THE AGREEMENT OF THE PARTIES TO ARBITRATE COVERS ALL DISPUTES OF EVERY KIND RELATING TO OR ARISING OUT OF THESE TERMS AND CONDITIONS OF USE. DISPUTES INCLUDE ACTIONS FOR BREACH OF CONTRACT OR NEGLIGENCE WITH RESPECT TO THESE TERMS AND CONDITIONS OF USE, AS WELL AS ANY CLAIM BASED UPON TORT OR ANY OTHER CAUSES OF ACTION. THE FORUM FOR THE ARBITRATION SHALL BE GREENVILLE, SOUTH CAROLINA, AND THE GOVERNING LAW FOR THE ARBITRATION SHALL BE THE LAW OF THE STATE OF SOUTH CAROLINA, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS. THE ARBITRATOR SHALL BE A MUTUALLY AGREED UPON MEMBER OF THE SOUTH CAROLINA BAR. IF THE PARTIES SHOULD BE UNABLE TO AGREE ON AN ARBITRATOR, THEN THEY SHALL EACH SELECT A PROPOSED ARBITRATOR WHO TOGETHER WILL SELECT THE SINGLE ARBITRATOR TO ADMINISTER THE PROCEEDING. EACH PARTY SHALL BEAR ITS OWN FEES AND EXPENSES WITH RESPECT TO THE ARBITRATION AND ANY PROCEEDING RELATED THERETO AND THE PARTIES SHALL SHARE EQUALLY THE FEES AND EXPENSES OF THE ARBITRATOR.

THE RULES OF ARBITRATION SHALL BE THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AS MODIFIED BY ANY OTHER INSTRUCTIONS THAT THE PARTIES MAY AGREE UPON AT THE TIME. THE ARBITRATOR SHALL BE BOUND BY AND SHALL STRICTLY ENFORCE THE TERMS OF THESE TERMS AND CONDITIONS OF USE AND MAY NOT LIMIT, EXPAND OR OTHERWISE MODIFY ITS TERMS.