

AGREEMENT OF SALE

DATED AS OF MAY 7, 2009

By and Between

CAPTAIN'S COVE GROUP, L.L.C.

and

CAPTAIN'S COVE GOLF AND YACHT CLUB, INC.

AGREEMENT OF SALE

This **AGREEMENT OF SALE** (this “**Agreement**”), dated as of May 7, 2009, by and between Captain’s Cove Group, LLC, a Maryland limited liability company (“**Seller**”) and Captain’s Cove Golf and Yacht Club, Inc. (“**Buyer**”).

RECITALS

WHEREAS: Seller is the owner of certain lots and other real property located in the Captain’s Cove Subdivision in Accomack County, Virginia (the “**Subdivision**”).

WHEREAS: The Buyer was established pursuant to the declaration of covenants for the Subdivision and constitutes the homeowner’s association of and for the Subdivision.

WHEREAS: Buyer, for the benefit of the Subdivision, wishes to purchase from Seller, and Seller has agreed to sell to Buyer all development rights, common areas, parks, open spaces, drainage easements, slope easements, utility easements, roads, and rights of way located in the Subdivision (the “**Development Rights**”), which are more particularly described on **Exhibit A**, together with certain real property located in the Subdivision (the “Marina Club Land”), which is more particularly described in **Exhibit B**, said Marina Club Land which consists of (i) all right title and interest of Seller in and to all improvements now or hereafter existing on the Marina Club Land (the “**Improvements**”), (ii) all right title and interest of Seller in and to all fixtures, including attached furnishings and equipment, remaining on the Marina Club Land or in the Improvements at Closing (as hereinafter defined) (collectively, the “**Personalty**”), and (iii) all right title and interest of Seller in and to any utilities, zoning or other benefits relating to the Marina Club Land (the Marina Club Land, together with all Improvements and Personalty and all other items described in the foregoing clauses (i) through (iii) being referred to collectively as the “**Property**”) the Property and the Development Rights are collectively referred to herein as the “Assets”, all upon the terms and conditions set forth in this Agreement, it being the intent of the parties that Seller will retain only the platted lots identified in the pending proceedings before the Bankruptcy Court and will transfer all other rights and ownership interests created pursuant to the declarations of restrictions, original recorded plat and any subsequent plats for the Subdivision, other than its right to not be assessed dues for the lots owned by Seller.

NOW, THEREFORE, in consideration of the mutual covenants of the parties as hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1 PURCHASE AND SALE OF ASSETS

1.1 **Sale and Purchase.** Upon the terms and subject to the conditions set forth in this Agreement, and in reliance on the respective representations and warranties of the parties, the Seller agrees to sell, convey, assign, transfer and deliver the Assets to Buyer, free and clear of all liens, and Buyer agrees to purchase the Assets from the Seller for the consideration and in accordance with the provisions hereof.

ARTICLE 2
CONSIDERATION, MANNER OF PAYMENT AND CONVEYANCE

2.1 Purchase Price. The aggregate purchase price for the Assets (the “**Purchase Price**”) shall be Six Million Two Hundred Forty-Three Thousand Dollars (\$6,243,000.00) and conveyance of the two parcels of real property located at the entrance to the Subdivision as more specifically identified on the attached Exhibit C (“the Entrance Parcels”).

2.2 Payment of Purchase Price. The Purchase Price shall be paid pursuant to the terms of the Deed of Trust and Promissory Note (“Note”), (which are attached as Exhibit D & E respectively) in consecutive monthly installments, with additional security provided by the assignment of the Subdivision assessments and the Pledge of the CCUC stock as set forth below. The payments shall commence on the first day of the month immediately following the Closing. The interest rate on the Note is subject to change from time to time based on changes in an index which is the New York Prime Lending Rate (as printed in the Wall Street Journal). The interest rate of this Note to be applied to the principal amount due shall be equal to the index and may be adjusted daily. The index is currently three and one-quarter percent (3.25%). An amortization of the Note payments based upon the current index is set forth on Schedule 2.2

In addition to the Note, Buyer shall execute and deliver to Seller a Special Warranty Deed conveying fee simple marketable title to the Entrance Parcels, free and clear of any liens and all other encumbrances and adverse claims, other than (a) any matter or thing which a current and accurate survey of the Entrance Parcels would reveal; or (b) matters of public record as of the date of this Agreement. Buyer shall retain an easement of approximately 50 by 50 feet for the purpose of and encompassing the area currently utilized for entry signage and landscaping. Seller shall pay all costs of recording the Entrance Parcel Deed unless otherwise required by law.

2.3 Post Closing Expenses. After the Closing, Buyer shall pay, as and when due, all taxes, costs, expenses, and liabilities of whatever kind associated with the Assets. The payment of the Purchase Price along with the post closing expenses set forth herein and interest as set forth in Section 2.2, shall be referred to collectively as the “Obligations.”

2.4 Waiver of Claims. The Buyer hereby releases and waives each and every right, claim, debt, cause of action, demand, suit for damages, liabilities, legal fees, acts or rights of action of any nature whatsoever against the Seller, including, but not limited to, any claims that the Buyer made, could have made, or is able to make against the Seller arising from or relating to, amounts the Buyer has expended with respect to the Assets.

2.5 Title. At closing, Seller shall execute and deliver to Buyer a Special Warranty Deed (“Deed”) conveying insurable fee simple marketable title to the Property, free and clear of any liens and all other encumbrances and adverse claims, other than (a) any matter or thing which a current and accurate survey of the Marina Club Property would reveal; (b) matters of public record as of the date of this Agreement; or (c) any liens, claims or other encumbrances that arise as a result of Buyer’s default under any of the provisions contained in this Agreement. Buyer shall pay all costs of recording the Deeds and Promissory Notes unless

otherwise required by law. Seller shall pay the costs of preparing the Deeds and Promissory Notes.

2.6 Allocation of Purchase Price. The Parties hereby allocate the \$6,243,000 payable by the Note to the acquisition of the Property and hereby allocate the conveyance of the Entrance Parcels to the acquisition of the Development Rights, and shall mutually report the transaction in accordance with this allocation

ARTICLE 3 SECURITY

3.1 Assignment. To secure the Buyer's full and faithful performance of the Obligations, including the payment pursuant to the Promissory Note, taxes and other costs associated with the Assets, the Buyer shall execute an assignment to Seller of the Buyer's rights to collect the Buyer's dues and assessments levied by the Buyer on its members or their property (collectively, the "**Assessments**") in the event of default. Seller may record such documents as may be deemed necessary by Seller in its sole discretion to perfect the security interest in the Assessments pursuant to the Uniform Commercial Code and Buyer agrees to execute such documents as may be necessary to perfect Seller's security interest.

3.2 Deed of Trust. To secure the Buyer's full and faithful performance of the Obligations, including the payment pursuant to the Promissory Note, taxes and other costs associated with the Assets, the Buyer shall execute a Deed of Trust, in the form set forth in Exhibit E hereto conveying the Property to Mark R. Baumgartner, Trustee for Seller.

ARTICLE 4 CONDITION PRECEDENT

The Parties' obligation to close pursuant to this Agreement is expressly contingent upon the following:

4.1 Court Approval. Approval of this Agreement by the United States Bankruptcy Court for the District of Maryland (the "**Bankruptcy Court**") in the chapter 11 proceedings of the Seller;

4.2 Confirmation of the Plan. Entry of an order by the Bankruptcy Court confirming the Seller's plan of reorganization in the chapter 11 proceedings of the Seller; and

4.3 Purchase of Utility Company Stock. The simultaneous closing on the purchase by Buyer of 100% of the stock of Captain's Cove Utility Company, Inc. from Robert E. Warfield, Sr., Roger A. Young and Harold P. Glick, in accordance with the terms and conditions set forth in that certain Stock Purchase Agreement dated May 7, 2009 (the "**Stock Purchase Agreement**").

4.4 Amendment to Articles of Incorporation. The simultaneous execution of a consent to the Amendment of the Articles of Incorporation of Captain's Cove Golf and Yacht

Club, Inc. waiving Seller's enhanced Class B voting rights in accordance with the Agreement to Amend dated May 7, 2009.

4.5 Approval of the Members. Approval of this Agreement and all agreements referenced herein by a majority vote of the members of Captain's Cove Golf and Yacht Club, Inc.

ARTICLE 5 SELLER' REPRESENTATIONS AND WARRANTIES

The Seller hereby represents and warrants to Buyer as of the date hereof as follows:

5.1 Organization and Authority. The Seller is a Maryland limited liability company duly organized, validly existing and in good standing under the laws of the State of Maryland. Subject to Article 4.1, the Seller has full power, right and authority to enter into and perform its obligations under this Agreement. The execution, delivery and performance by Seller of this Agreement and each of the related documents to which Seller is a party has been duly and properly authorized by all requisite corporate action in accordance with applicable law. This Agreement has been duly executed and delivered by Seller and is the valid and binding obligation of Seller and is enforceable against Seller in accordance with its respective terms. Other than as set forth herein, no permits, approvals or consents of or notifications to (a) any governmental entities or (b) any other persons are necessary in connection with the execution, delivery and performance by the Seller of this Agreement.

5.2 Real Property. The Seller is selling the Property AS IS, and makes no warranties or representations of any kind as to the condition of the Property, or the suitability of any of the Property for any particular use or purpose.

5.3 Ownership. Seller is the owner of the fee simple marketable title to the Property, and is duly authorized and empowered to sell such property subject to the approval of the United States Bankruptcy Court for the District of Maryland.

5.4 Transaction Not a Breach. Neither the execution nor the delivery of this Agreement and the closing documents by the Seller, nor the performance by the Seller of the transactions contemplated hereby or thereby will:

- (a) constitute a default under the Operating Agreement of the Seller; or
- (b) result in the creation or imposition of any lien upon the Property.

ARTICLE 6 BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer hereby represents and warrants to the Seller as of the date hereof as follows:

6.1 Organization. Buyer is a nonstock corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia.

6.2 Authorization. Buyer has full power, right and authority to enter into and perform its obligations under this Agreement and each of the related documents to which it is a party. The execution, delivery and performance by Buyer of this Agreement have been duly and properly authorized by all requisite corporate action in accordance with applicable law.

6.3 Independent Investigation. Buyer has conducted such investigation as Buyer deemed necessary in its sole and absolute discretion to determine for its own account the value and condition of the Property and has not relied on any representation, verbal or written, made by Seller.

ARTICLE 7 CLOSING

7.1 Time and Place. The closing of the transactions that are the subject of this Agreement (the “**Closing**”) shall be held in person, by mail and/or telephonically at the offices of Pender & Coward, P.C., within 30 days after obtaining the approval of the Court as set forth in Section 4.1 (the “**Closing Date**”) or at such other time or place as the parties hereto shall mutually agree.

7.2 Expenses. Buyer and Seller shall each pay their own respective costs, expenses and attorneys’ fees incurred in this transaction. The Buyer and Seller acknowledge that Pender & Coward, P.C. represents Seller only and has not acted on behalf of the Buyer.

7.3 Agents. The parties represent that neither has engaged a real estate agent with respect to this transaction. Each agrees to indemnify and hold harmless the other harmless from and against any and all claims of real estate commissions connected herewith.

7.4 Deliveries of the Seller. At the Closing, the Seller will execute and deliver or cause to be executed and delivered to Buyer:

(a) a Certificate of Good Standing, with respect to the Seller, issued by the Clerk of the State Corporation Commission of the Commonwealth of Virginia; and

(b) copies of resolutions of the members of the Seller, certified by the secretary of the Seller as having been duly and validly adopted and being in full force and effect, authorizing the execution and delivery of this Agreement and all related documents and the performance of the Seller’s obligations under this Agreement and all related documents; and

(c) such other documents and instruments as the parties, Buyer or its counsel reasonably shall deem necessary to consummate the transactions contemplated hereby.

7.5 Deliveries of Buyer. At the Closing, Buyer will deliver to the Seller simultaneously with the delivery of the items referred to in Section 7.4 above:

(a) a Certificate of Good Standing, with respect to the Buyer, issued by the Clerk of the State Corporation Commission of the Commonwealth of Virginia;

(b) copies of resolutions of the members of the Buyer, certified by the secretary of the Buyer as having been duly and validly adopted and being in full force and effect, authorizing the execution and delivery of this Agreement and all related documents and the performance of the Buyer's obligations under this Agreement and all related documents;

(c) a duly executed Assignment of the Buyer's Assessments; and

(d) a duly executed Deed of Trust, in the form attached as Exhibit D; and

(e) a duly executed Promissory Note, in the form attached as Exhibit E; and;

(f) such other documents and instruments as Seller or its counsel reasonably shall deem necessary to consummate the transactions contemplated hereby.

ARTICLE 8 MISCELLANEOUS

8.1 Notices, Consents, etc. Any notices, consents or other communication required to be sent or given hereunder by any party shall in every case be in writing and shall be deemed properly served if (a) delivered personally, (b) sent by registered or certified mail, in all such cases with first class postage prepaid, return receipt requested, (c) delivered by a recognized overnight courier service, or (d) sent by facsimile transmission to the parties at the addresses as set forth below or at such other addresses as may be furnished in writing.

Buyer: **General Manager
Captain's Cove Golf and Yacht Club, Inc.
3370 Captain's Corridor
Greenbackville, VA 23356**

With a copy to:

**Michael A. Inman, Esquire
Inman & Strickler, P.L.C.
575 Lynnhaven Parkway Ste 200
Virginia Beach, VA 23452**

Seller: **Roger Young
6014 South Point Road
Berlin, MD 21811**

With a copy to:

Mark R. Baumgartner, Esq.

Pender & Coward, P.C.
222 Central Park Ave., Suite 400
Virginia Beach, VA 23462

8.2 Severability. The unenforceability or invalidity of any provision of this Agreement shall not affect the enforceability or validity of any other provision.

8.3 Amendment and Waiver. This Agreement may be amended, or any provision of this Agreement may be waived, provided that any such amendment or waiver will be binding on Buyer only if such amendment or waiver is set forth in a writing executed by Buyer, and provided that any such amendment or waiver will be binding upon the Seller, only if such amendment or waiver is set forth in a writing executed by the Seller. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other breach.

8.4 Documents. Each party will execute all documents and take such other actions as the other party may reasonably request in order to consummate the transactions provided for herein and to accomplish the purposes of this Agreement.

8.5 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other.

8.6 Telecopy Execution and Delivery. A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto, and an executed copy of this Agreement may be delivered by one or more parties by facsimile or similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party, all parties agree to execute an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

8.7 Expenses. Except as paid prior to the date hereof or otherwise specifically provided herein, each of the parties shall pay all costs and expenses incurred or to be incurred by it, him or her, as the case may be, in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

8.8 Construction. This Agreement shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Agreement shall be governed by, the laws of the Commonwealth of Virginia, without giving effect to provisions thereof regarding conflict of laws.

8.9 Jurisdiction. By this Agreement, each of the parties hereto submits to the jurisdiction of the Bankruptcy Court for any action to enforce or interpret this Agreement, so long as the chapter 11 bankruptcy case of any of Robert E. Warfield, Sr. and Margaret Warfield, Harold P. Glick or the Seller remains open.

8.10 Headings. The subject headings of Articles and Sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

8.11 Assignment. This Agreement is intended to bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns. This Agreement will not be assignable or delegable by either party without the prior written consent of the other party.

8.12 Entire Agreement. This Agreement, the Recitals and all the Schedules attached to this Agreement (all of which shall be deemed incorporated in the Agreement and made a part hereof) set forth the entire understanding of the parties with respect to the subject matter hereof, and shall not be modified or affected by any offer, proposal, statement or representation, oral or written, made by or for any party in connection with the negotiation of the terms hereof, and may be modified only by instruments signed by all of the parties hereto.

8.13 Third Parties. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties to this Agreement and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

8.14 Interpretative Matters. Unless the context otherwise requires, (a) all references to Articles, Sections or Schedules are to Articles, Sections or Schedules in this Agreement, and (b) words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter and the term “including” shall mean by way of example and not by way of limitation.

8.15 No Strict Construction. The language used in this Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any party hereto.

8.16 Time of the Essence. Time is of the essence in this Agreement.

[END OF TEXT; SIGNATURES NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

CAPTAIN'S COVE GROUP, L.L.C.

By:
Name:
Its:

BUYER:

CAPTAIN'S COVE GOLF & YACHT CLUB, INC.

By:
Its:

EXHIBIT A

The Assets which are the subject of this Agreement of Sale, in addition to those set out in Exhibit B:

- 1. All common areas, parks, open spaces and land upon which recreational amenities, such as waterways, dams, water impoundments, marinas, beaches, access tracts, golf courses, swimming pools, clubhouses and adjacent clubhouse grounds and campgrounds as identified in the restrictive covenants, the original recorded plat and any subsequent plats as being reserved to Declarant.**
- 2. All roads and areas platted for construction of future roads as identified in the restrictive covenants, the original recorded plat and any subsequent plats.**
- 3. All easements and/ or rights of way reserved to the Declarant in the restrictive covenants, the original recorded plat and any subsequent plats for purposes incident to the development of the real property within the Subdivision, including but not limited to drainage easements, slope easements, access to well lots, drainage, repair and maintenance of waterways and bulkheads, utility easements, flowage easements, and easements for installation of CATV.**

EXHIBIT B

LEGAL DESCRIPTION OF MARINA CLUB LAND

**SCHEDULE 2.2
PAYMENT SCHEDULE**

THIS SCHEDULE IS A DRAFT AND SUBJECT TO CHANGE – IT IS USED FOR
ILLUSTRATIVE PURPOSES

**CAPTAIN'S COVE GROUP, LLC
CCG INSTALLMENT SALE OF MARINA TO CCG&YC, INC.
AS OF 8-1-
09**

Amount	\$ <u>6,243,000</u>
3.25% int., prime floating	
15 year amortization	
5 year balloon	

Monthly payments	
	days per
30	mo
	days per
360	yr

Payment Number	Date	Total	Principal	3.25% Interest	Balance
-	8/1/09	-	-	-	6,243,000
1	9/1/09	43,900	27,000	16,900	6,216,000
2	10/1/09	43,900	27,100	16,800	6,188,900
3	11/1/09	43,900	27,100	16,800	6,161,800
4	12/1/09	43,900	27,200	16,700	6,134,600
5	1/1/10	43,900	27,300	16,600	6,107,300
6	2/1/10	43,900	27,400	16,500	6,079,900
7	3/1/10	43,900	27,400	16,500	6,052,500
8	4/1/10	43,900	27,500	16,400	6,025,000
9	5/1/10	43,900	27,600	16,300	5,997,400
10	6/1/10	43,900	27,700	16,200	5,969,700

11	7/1/10	43,900	27,700	16,200	5,942,000
12	8/1/10	43,900	27,800	16,100	5,914,200
13	9/1/10	43,900	27,900	16,000	5,886,300
14	10/1/10	43,900	28,000	15,900	5,858,300
15	11/1/10	43,900	28,000	15,900	5,830,300
16	12/1/10	43,900	28,100	15,800	5,802,200
17	1/1/11	43,900	28,200	15,700	5,774,000
18	2/1/11	43,900	28,300	15,600	5,745,700
19	3/1/11	43,900	28,300	15,600	5,717,400
20	4/1/11	43,900	28,400	15,500	5,689,000
21	5/1/11	43,900	28,500	15,400	5,660,500
22	6/1/11	43,900	28,600	15,300	5,631,900
23	7/1/11	43,900	28,600	15,300	5,603,300
24	8/1/11	43,900	28,700	15,200	5,574,600
25	9/1/11	43,900	28,800	15,100	5,545,800
26	10/1/11	43,900	28,900	15,000	5,516,900
27	11/1/11	43,900	29,000	14,900	5,487,900
28	12/1/11	43,900	29,000	14,900	5,458,900
29	1/1/12	43,900	29,100	14,800	5,429,800
30	2/1/12	43,900	29,200	14,700	5,400,600
31	3/1/12	43,900	29,300	14,600	5,371,300
32	4/1/12	43,900	29,400	14,500	5,341,900
33	5/1/12	43,900	29,400	14,500	5,312,500

34	6/1/12	43,900	29,500	14,400	5,283,000
35	7/1/12	43,900	29,600	14,300	5,253,400
36	8/1/12	43,900	29,700	14,200	5,223,700
37	9/1/12	43,900	29,800	14,100	5,193,900
38	10/1/12	43,900	29,800	14,100	5,164,100
39	11/1/12	43,900	29,900	14,000	5,134,200
40	12/1/12	43,900	30,000	13,900	5,104,200
41	1/1/13	43,900	30,100	13,800	5,074,100
42	2/1/13	43,900	30,200	13,700	5,043,900
43	3/1/13	43,900	30,200	13,700	5,013,700
44	4/1/13	43,900	30,300	13,600	4,983,400
45	5/1/13	43,900	30,400	13,500	4,953,000
46	6/1/13	43,900	30,500	13,400	4,922,500
47	7/1/13	43,900	30,600	13,300	4,891,900
48	8/1/13	43,900	30,700	13,200	4,861,200
49	9/1/13	43,900	30,700	13,200	4,830,500
50	10/1/13	43,900	30,800	13,100	4,799,700
51	11/1/13	43,900	30,900	13,000	4,768,800
52	12/1/13	43,900	31,000	12,900	4,737,800
53	1/1/14	43,900	31,100	12,800	4,706,700
54	2/1/14	43,900	31,200	12,700	4,675,500
55	3/1/14	43,900	31,200	12,700	4,644,300
56	4/1/14	43,900	31,300	12,600	4,613,000

57	5/1/14	43,900	31,400	12,500	4,581,600
58	6/1/14	43,900	31,500	12,400	4,550,100
59	7/1/14	43,900	31,600	12,300	<u>4,518,500</u>
60	8/1/14	<u>4,530,700</u>	<u>4,518,500</u>	<u>12,200</u>	<u>-</u>
		<u>7,120,800</u>	<u>6,243,000</u>	<u>877,800</u>	

THIS SCHEDULE IS A DRAFT AND SUBJECT TO CHANGE – IT IS USED FOR ILLUSTRATIVE PURPOSES