



# The Cattie Law Firm, P.C.

U.S. Virgin Islands EST. 2010

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October 24, 2019

Via first-class mail and e-mail to: [nfrancis@legvi.org](mailto:nfrancis@legvi.org)

The Hon. Novelle E. Francis, Jr.-Senate President  
Legislature of the Virgin Islands  
Capitol Building, Charlotte Amalie  
P.O. Box 1690  
St. Thomas, Virgin Islands 00804

Re: *The Summer's End Group, LLC v. Jim Phillips, Genoveva Rodriguez, and James Peyton Phillips*; D.C. Case No. 2019-cv-59.

Dear President Francis,

I am writing this letter on behalf of my client, The Summer's End Group, LLC ("SEG"), in regard to the above referenced matter. I thank you in advance for taking the time to review this correspondence. My client has asked me to draft this letter outlining SEG's legal interest in Parcel No. 13 Remainder Carolina, Coral Bay Quarter, St. John, U.S. Virgin Islands (the "Property").

On December 2, 2013 Jim Phillips and Genoveva Rodriguez entered into a Contract of Sale with SEG's predecessor in interest, The Yacht Club at Summer's End, LLC for the sale of the Property. (**Exhibit 1**).

The parties entered in to two amendments to the Contract of Sale, the last of which was executed by the sellers on June 27, 2016, with SEG counter-signing on July 5, 2016. (**Exhibit 2**). This amendment required SEG to pay additional deposits with the sellers to, among other things, alter the date for closing. SEG paid, and the sellers accepted, these additional non-refundable deposits pursuant to the amendments to the Contract of Sale. Importantly, the second amendment to the Contract of Sale includes a provision for the closing date which read as follows:

2. Paragraph 4 of the Original Contract, and item "2." of the [First] Amendment to Contract shall be deleted and replaced with the following: **The Closing shall take place on St. Thomas or St. John, U.S. Virgin Islands within one (1) week upon receipt of U.S. Army Corps of Engineers (USACE) and U.S. Virgin Islands CZM (CZM) permits as long as neither permit is appealed.**

1710 Kongens Gade, St. Thomas, V.I. 00802  
Tel.: 340.775.1200 | Fax.: 800.878.5237

Should Closing be delayed beyond a time period that is deemed unacceptable after U.S. Army Corps of Engineers and U.S. Virgin Island CZM permits are issued and not appealed, both Seller and Buyer reserve the right to cancel the Contract by supplying written notification to the other party, informing the other party that in 30 days the Contract will become null and void. If for any reason closing does not take place, all deposits become non-refundable.

(**Exhibit 2** at ¶ 2)(emphasis added).

To date, SEG has paid the sellers \$135,000 in non-refundable deposits pursuant to the Contract for Sale and amendments, which included an additional \$10,000 payment to the sellers as consideration for the second amendment to the Contract for Sale. (**Exhibit 3**). As purchaser of the subject Property, SEG holds “equitable title” thereto. Equitable title vests all rights and interest in the Property with SEG. The sellers retain “legal title” to the Property solely as security for the purchase price at closing. Sellers hold no other rights or interest in the Property and they can neither sell nor lease the property or encumber the Property in any way. In addition, SEG holds the right to apply for all permits related to the marina project as it hold superior title to the property over any other interest.

It is axiomatic that “[t]he concept of equitable title ... appl[ies] in the Virgin Islands to a contract to purchase land... .” *DeCastro v. Stuart*, 2004 WL 744194, at \*5 (D.V.I. Apr. 2, 2004). As our Justice (then Judge) Cabret explained, “[i]t is the well settled doctrine of our courts of equity that, **under a contract for the sale of lands, the purchaser becomes the equitable owner of the lands,...**” *Griles v. Griles*, 1998 WL 707773, at \*3 (Terr. V.I. Sept. 29, 1998), *aff’d*, 2001 WL 674164 (D.V.I. May 31, 2001)(emphasis added)(citation omitted). An equitable owner is defined as:

One who is recognized in equity as the owner of the property, **because the real beneficial use and title belong to him, although the bare legal title is vested in another** ... one has a present title in land which will ripen into legal ownership upon the performance of the conditions subsequent. There may therefore be two “owners” in respect to the same property, one the...legal owner, the other the beneficial or equitable owner. BLACK'S LAW DICTIONARY, at 1996 (5th ed.1979).

**An equitable title holder holds a real property interest that he can transfer and ... mortgage. As holder of the legal title, the mortgagor also owns a real property interest, but he holds the title simply as security for the payment of the contract debt and as trustee for the mortgagee.** Powell on Real Property § 85D.D1 (2000).

*Williams v. Mackay*, 2011 WL 98401, at \*2 (D.V.I. Jan. 6, 2011)(emphasis added). “Execution of a contract for the sale of realty vests equitable title to the realty in the purchaser. [] The seller retains legal title only as a security against the purchase price.” *Posel v. Redevelopment Auth. of City of Philadelphia*, 72 Pa. Cmwlth. 115, 121, 456 A.2d 243, 246 (Pa. Cmwlth. 1983). “An

equitable title is superior to legal title to the property... ." *Cadle Co. v. Harvey*, 46 S.W.3d 282, 287 (Tex. App. 2001).

As equitable owner, SEG hold the real and beneficial interest in the property. Indeed, its interest is superior to that of the sellers, as they hold legal title only as security for the receipt of the purchase price at closing. SEG, therefore, holds the right to do all thing necessary to apply for and obtain permits as owner of the subject Property. Pursuant to the Contract of Sale and the amendments, the closing on the Property will take place within one week of the issuance of the CZM and USACE permits. While the delay in closing has certainly frustrated the sellers, they are bound by the agreements which they executed and for which they have already accepted remuneration. There is no legal impediment whatsoever to SEG applying for or obtaining all necessary permits related to the marina as it relates to the Property.

Again, I thank you and your colleagues for taking the time to consider this correspondence and the important issues outlined herein. If you need any additional information from me, please do not hesitate to contact me.

Sincerely,



DAVID J. CATTIE, ESQ.

**cc:**

Senator Alicia V. Barnes	<a href="mailto:abarnes@legvi.org">abarnes@legvi.org</a> ;
Senator Oakland Benta	<a href="mailto:obenta@legvi.org">obenta@legvi.org</a> ;
Senator Marvin A. Blyden	<a href="mailto:mblyden@legvi.org">mblyden@legvi.org</a> ;
Senator Allison L. DeGazon	<a href="mailto:adegazon@legvi.org">adegazon@legvi.org</a> ;
Senator Dwayne M. DeGraff	<a href="mailto:ddegraff@legvi.org">ddegraff@legvi.org</a> ;
Senator Donna Frett-Gregory	<a href="mailto:dfrett-gregory@legvi.org">dfrett-gregory@legvi.org</a> ;
Senator Kenneth L. Gittens	<a href="mailto:senatorgittens@legvi.org">senatorgittens@legvi.org</a> ;
Senator Stedmann Hodge, Jr.	<a href="mailto:shodge@legvi.org">shodge@legvi.org</a> ;
Senator Myron D. Jackson	<a href="mailto:mjackson@legvi.org">mjackson@legvi.org</a> ;
Senator Javan E. James, Sr.	<a href="mailto:jjames@legvi.org">jjames@legvi.org</a> ;
Senator Steven D. Payne, Sr.	<a href="mailto:spayne@legvi.org">spayne@legvi.org</a> ;
Senator Janelle K. Sarauw	<a href="mailto:jsarauw@legvi.org">jsarauw@legvi.org</a> ;
Senator Athneil "Bobby" Thomas	<a href="mailto:bthomas@legvi.org">bthomas@legvi.org</a> ;
Senator Kurt A. Vialet	<a href="mailto:kvialet@legvi.org">kvialet@legvi.org</a>



pg 1



# ISLANDIA REAL ESTATE

PO BOX 56, ST. JOHN VI  
PHONE 340 776-6666 FAX 340 693-8499

info@islandiarealestate.com www.islandiarealestate.com



Exhibit 1

## CONTRACT OF SALE (COMMERCIAL/LAND)

THIS AGREEMENT DATED THE 2 DAY OF November, 2013, BETWEEN:

BUYERS: The Yacht Club at Summer's End, LLC, and/or assigns

SELLERS: Jim Phillips a/k/a James Phillips & Genoveva Rodriguez

1. The Buyer(s) agree(s) to purchase and the Seller agree(s) to convey, the following described real estate under the terms and conditions hereinafter set forth:

Parcel No. 13 Remainder Carolina (Western and Eastern Portions)  
Coral Bay Quarter  
St. John, U.S. Virgin Islands

consisting of 0.75 acre(s) +/- as shown on OLG#D9-8685-T012, and all improvements on the property. Buyer understands that Parcel 13A as shown on PWD/OLG D9-6366-T98, and Parcels 13B, C, and D, as shown on PWD/OLG D9-6533-T99, and Parcels 13E, F, and G, are not being conveyed by Seller to Buyer pursuant to this Agreement. (See EXHIBIT 1)

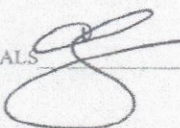
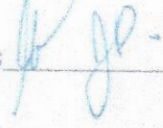
2. The Buyer(s) shall pay the purchase price of FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS (\$4,500,000.00) payable as follows: FIFTY THOUSAND DOLLARS (\$50,000.00) deposit payable to Seller within one (1) business day of full execution of this contract, FIFTY THOUSAND DOLLARS (\$50,000.00) additional deposit on or before March 31, 2014, FIFTY THOUSAND DOLLARS (\$50,000.00) additional deposit on or before June 30, 2014, and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) additional deposit on or before September 30, 2014, two hundred thousand dollars (\$200,000.00) of which shall be credited to the purchase price at closing. None of the deposits shall be refundable to Buyer under any circumstance. The balance of the purchase price shall be paid as follows: CERTIFIED LOCAL FUNDS AT CLOSING.

3. Seller(s) shall execute this Contract within Two (2) Calendar days of the time it has been signed by the Buyer(s) or else Buyer's offer shall be deemed withdrawn and shall be null and void

4. The Closing shall take place on St. Thomas or St. John, U.S. Virgin Islands on or before December 1, 2014, or thirty days (30), more or less, after written notice received by both Buyer and Seller, and Seller's attorney, of the issuance of a major land and water permit for the development of the property as a marina, per Buyer's design and specifications, from the VI Coastal Zone Management (CZM) and U.S. Army Corps of Engineers (COE) permits, and closing on complete project financing, whichever occurs sooner. TIME IS OF THE ESSENCE.



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BUYER'S INITIALS  SELLER'S INITIALS 

5. Seller(s) can and will deliver at the Closing marketable title via a warranty deed for the real estate free and clear of any and all encumbrances and will pay the cost of preparing the deed or sales document. Buyer and Seller will each pay one half the costs of securing the necessary attest and affixing the necessary tax stamps thereon. Real estate taxes, association dues and road assessments, if any, shall be prorated to the date of Closing. The cost of preparing and recording the mortgage papers, notes, assumption agreements or other necessary documents shall be borne by the Buyer. (See also paragraph A)

6. Seller(s) is required to and has provided, at his/her (their) expense, a current legal description of the real estate by survey drawing, metes and bounds description, measure brief, or other means for the purpose of preparing proper sales documents. The Seller(s) is required and has provided at his/her (their) expense the placement or location of bound-posts on the property in identifiable positions. This sale shall be subject to recorded easements, restrictions, reservations, and Virgin Islands' laws, rules and regulations; the Buyer(s) shall have THIRTY (30) days from the date of final execution of this Agreement to inspect the same, as well as to inspect all other physical and title aspects and conditions of the property (buyers "due diligence period") and shall be deemed to consent to them unless he/she (they) file(s) written objections by the end of said period with the Broker. Buyer agrees to accept title to the property subject to an easement in favor of Grantor's adjacent property for the maintenance and placement of the two encroachments (electric service pole and meter, and gate and concrete post) onto the subject property, as provided for and as shown on Exhibit 2 attached hereto and incorporated herein by reference.



At closing, Seller shall provide buyer with written Estoppel Certificates from all tenants indicating no lease violations by landlord or rental set offs claimed by tenants. Buyer shall be given full access to the premises at reasonable times in order for buyer to conduct necessary inspection (both interior and exterior).

7. The Buyer(s) shall have the right to obtain, at his/her (their) expense, a title insurance policy subject only to standard Virgin Islands exceptions on the property as of the date of Closing.

8. In the event of a survey problem or title defect that cannot be cleared prior to Closing, despite Seller's due diligence, or Seller's default hereunder, or Seller's inability to deliver the property and improvements at closing in the same substantial physical condition at closing as it was as at the time of contracting (despite Seller's due diligence), then the Buyer, at its sole option, shall be released from any and all further obligations hereunder. The risk of loss during the pendency of this contract shall be borne by Seller.

9. This paragraph intentionally left blank.

10. Merry Nash, of Islandia Real Estate, and Brion Morrisette, Esq., are recognized as the real estate brokers who have rendered personal professional services in this transaction, the Seller(s) agree(s) to pay Islandia Real Estate at Closing the Professional Service Fee of 5 % agreed to in the Listing Agreement.

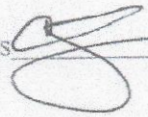
BUYER'S INITIALS  SELLER'S INITIALS 



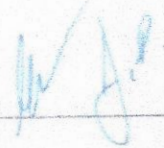
pg 3

- 11. This Contract and exhibits state the entire Agreement between the parties hereto and no oral statement or representation not contained in this Contract shall have any force or effect. The provisions of this Contract cannot be changed, except by an instrument in writing signed by both parties. This agreement shall be binding upon the heirs, successors, legal representatives and assigns of all parties hereto.
- 12. Buyer(s) and Seller(s) agree to accept each other's electronically transmitted signatures as legally binding for the purposes of this Contract.
- 13. The parties hereby acknowledge that Islandia Real Estate and Merry Nash are agents for the Sellers and that Brion Morrisette is agent and legal counsel for the buyers. Buyers certify that they have received an Agency Disclosure from the Selling Realtor and have signed the form prior to executing this Contract of Sale.
- 14. Buyer(s) acknowledge, subject to buyer's rights of inspection and objection during the due diligence period, as set forth herein, and Seller's obligation to deliver the property at closing in substantially the same physical condition as at contracting, that the Property is being sold AS IS, WHERE IS AND WITH ALL FAULTS AND DEFECTS. In no case shall Realtor be held responsible for damage or defects to the property and Realtor makes no personal or professional claim as to the condition of the property except as represented by the Seller.
- 15. Buyer and Seller acknowledge that certain items are required by Virgin Islands law to consummate this sale. Both parties agree to use best efforts to obtain these items and will work diligently to that end.
- 16. This Contract has been written at the request of the Buyer and/or Seller and both parties have been advised by Realtor to consult an attorney before signing.
- 17. Buyer acknowledges that Seller may elect to sell this property in accordance with provisions of Section 1031 of the Internal Revenue Code, as a "like-kind" exchange. Buyer agrees to cooperate with Seller at no cost to Buyer by executing any necessary documents to comply with the requirements of Section 1031. Both parties acknowledge that this Contract is NOT contingent upon any 1031 Tax Free Exchange or the sale of any other property than the one named in this Contract. This language is inserted simply to facilitate cooperation in signing documents.
- 18. The Warranty Deed attached to this Contract as Exhibit 3 and the Grant of Easement attached to this Contract as Exhibit 2 are approved by Buyer and shall not be subject to further revision. The Estoppel Certificates attached to this Contract as Exhibit 4 are approved as to form by Buyer and shall not be subject to further revision except as to completion of the information as required by the Estoppel Certificates.
- 19. This paragraph intentionally left blank.

BUYER'S INITIALS



SELLER'S INITIALS





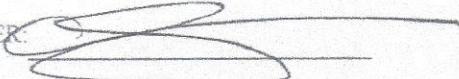




Buyer's objection, or Buyer may cancel the contract and neither party shall have further liability to the other. Buyer has completed, however, all known required studies and tests at this time. However, Buyer, its agents, employees or other representatives, shall have the right during the term of this Contract to go upon the Property for the purpose of making surveys, appraisals, engineering, topographical, environmental, geological and other due diligence studies, tests and measurements including, but not limited to, soil and sub-soil tests, as Buyer deems necessary or advisable without cost to the Seller. Buyer shall perform such tests so as to cause as little harm or damage to the Property while such surveys or tests are being made, and shall indemnify Seller against any claims or losses occasioned by the exercise of the right of entry granted under the provisions hereof.

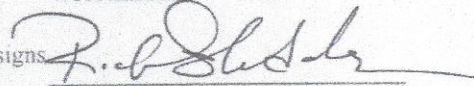
READ CAREFULLY BEFORE SIGNING AND CONSULT AN ATTORNEY AND YOUR TAX ADVISOR AS TO THE CONSEQUENCES OF THIS CONTRACT OF SALE. THIS IS A LEGALLY BINDING CONTRACT. Both Buyer(s) and Seller(s) hereby acknowledge that they have each received a copy of this Contract of Sale.

DATE: 12/3/2013 TIME: 6:55pm.

BUYER: 

WITNESSES:

The Yacht Club at Summer's End, LLC, and/or

assigns 

SS/EIN# \_\_\_\_\_

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

SELLER: 

WITNESSES: 

James Phillips  
SS# 1421-74-4481



SELLER: 

Genoveva Rodriguez  
SS# 262-57-3641



## SECOND AMENDMENT TO CONTRACT OF SALE

For and in consideration of their mutual promises stated herein, JIM PHILLIPS A/K/A JAMES PHILLIPS and GENOVEVA RODRIGUEZ (hereinafter "Seller") and The Summer's End Group, LLC, (hereinafter Buyer) per Assignment to Contract (hereinafter "Assignment to Contract") dated March 28, 2014 from The Yacht Club at Summer's End, LLC to The Summer's End Group, LLC, hereby enter into this Second Amendment to Contract of Sale (hereinafter "Second Amendment"), amending that Contract of Sale between Seller and Buyer dated December 2, 2013 (the "Original Contract"), and the Amendment to Contract of Sale (the first "Amendment to Contract"), in relation to the purchase and sale of Parcel No. 13 Remainder Carolina (Western and Eastern Portions), Coral Bay Quarter, St. John, U.S. Virgin Islands (all of which agreements are hereinafter collectively referred to as the "Contract"), as follows:

1. Paragraph 2 of the Original Contract, and item "1." of the Amendment to Contract shall be deleted and replaced with the following: The Buyer(s) shall pay the purchase price of FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS (\$4,500,000.00) payable as follows: FIFTY THOUSAND DOLLARS (\$50,000.00) deposit payable to Seller within one (1) business day of full execution of this contract, FIFTY THOUSAND DOLLARS (\$50,000.00) additional deposit on or before March 31, 2014, fifty thousand dollars (\$50,000.00) of which shall be credited to the purchase price at closing. Buyer(s) to pay to Seller an additional deposit by June 30, 2016 of TEN THOUSAND DOLLARS (\$10,000.00) of which ten thousand dollars (\$10,000.00) shall be credited to the purchase price at closing. None of the deposits shall be refundable to Buyer under any circumstance. The balance of the purchase price shall be paid as follows: CERTIFIED LOCAL FUNDS AT CLOSING.
2. Paragraph 4 of the Original Contract, and item "2." of the Amendment to Contract shall be deleted and replaced with the following: The Closing shall take place on St. Thomas or St. John, U.S. Virgin Islands within one (1) week upon receipt of U.S. Army Corps of Engineers (USACE) and U.S. Virgin Islands CZM (CZM) permits as long as neither permit is appealed. Should Closing be delayed beyond a time period that is deemed unacceptable after U.S. Army Corps of Engineers and U.S. Virgin Island CZM permits are issued and not appealed, both Seller and Buyer reserve the right to cancel the Contract by supplying written notification to the other party, informing the other party that in 30 days the Contract will become null and void. If for any reason closing does not take place, all deposits become non-refundable.
3. Except as expressly amended hereby, the terms of the Original Contract, shall remain in full force and effect.



Buyer initials:                      Seller Initials: Jim Phillips JOP Genoveva Rodriguez                     

Buyer and Seller recognize that the original contract included a fifty thousand dollar (\$50,000.00) deposit that was due by Buyer to Seller on June 30, 2014. In order to facilitate an anticipated earlier closing by both parties, funds were not made available to the Seller for the fifty thousand dollar deposit which was due under the subject agreement. Seller agrees to waive the fifty thousand dollar deposit, at no fault to Seller what so ever, that was due on June 30, 2014 in order to move the closing date. All deposits paid to Seller to date are non-refundable.

BUYER



Chaliese Summers, Member Manager  
The Summer's End Group, LLC

WITNESS



Date: July 5, 2016

SELLER:



JIM PHILLIPS A/K/A JAMES PHILLIPS



GENOVEVA RODRIGUEZ

WITNESS (as to both)

Date: 6/27/16



101-605-216 4161

*The Yacht Club at Summer's End*  
 5000 Estate Enighed PMB 63  
 St. John, U.S. Virgin Islands 00830  
 340-777-9075

DATE: July 5, 2016

PAY TO THE ORDER OF: Genoveva Rodriguez \$ 10,000<sup>00</sup>/<sub>100</sub>

Ten thousand dollars <sup>00</sup>/<sub>100</sub> DOLLARS

MEMO: 2<sup>nd</sup> Amendment Contract

Scotiabank The Bank Of Nova Scotia  
 St. Thomas, US Virgin Islands 00801

The Summer's End Group, LLC

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