

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

In re: BBB, LLC,

Case No. 15-71735-FJS
Chapter 11

Debtor in Possession.

EIN: xx-xxx9375
Address: 1401 Precon Drive, Suite 101, Chesapeake, VA 23320

**ORDER GRANTING MOTION TO AUTHORIZE SALE OF CERTAIN
REAL PROPERTY OF BBB, LLC, TO YACHT DRIVE DEVELOPMENT, LLC**

On May 12, 2016, BBB, LLC, the debtor in possession in this chapter 11 bankruptcy case (“BBB” or the “Debtor”), by counsel, filed its *Motion to Authorize Sale of Certain Property of BBB, LLC, to Yacht Drive Development, LLC* (the “Sale Motion”) [Docket No. 73], respectfully moving this Court to authorize the sale of the real property referred to as “Parcel G-1” owned by the Debtor to Yacht Drive Development, LLC, or its assigns (“YDD”), pursuant to 11 U.S.C. § 363(b) and Fed. R. Bankr. P. 2002 and 6004, free and clear of any interest in such property of an entity other than the Debtor’s estate under 11 U.S.C. § 363(f). Parcel G-1 is more particularly described in **Exhibit A** attached hereto. The terms of the transaction contemplated in the Sale Motion are specified in an *Agreement of Purchase and Sale* dated as March 30, 2016 between the Debtor and YDD (the “Sale Agreement”). A copy of the Sale Agreement is attached hereto as **Exhibit B**. Notice of the hearing on the Sale Motion (together with a copy of the Sale Agreement) was served on all required parties on May 17, 2016. A hearing was conducted on the matter on June 14, 2016. No party has objected to the Sale Motion.

Joseph T. Liberatore, VSB # 32302
Joshua D. Stiff, VSB # 86105
CROWLEY, LIBERATORE, RYAN & BROGAN, P.C.
150 Boush Street, Suite 300
Norfolk, VA 23510
Telephone: (757) 333-4500
Facsimile: (757) 333-4501
Counsel for the Debtor

Based on the Sale Motion and the representations of the parties, this Court makes the following findings of fact and conclusions of law:

1. On May 19, 2015 (the “Filing Date”), BBB filed its voluntary petition in this Court under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). An order for relief was entered on the same date.

2. This Court has original jurisdiction over the subject matter of the Sale Motion pursuant to 28 U.S.C. §§ 157(a) and 1334, and this matter is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (N).

3. BBB owns Parcel G-1, which is associated with the address 1301 Yacht Drive, Chesapeake, Virginia 23320 and Tax Map No. 0350000000630.

4. Parcel G-1 is encumbered by liens in favor of the City of Chesapeake (“Chesapeake”) and The Bank of Hampton Roads (“BOHR”).

5. BBB is liable to Chesapeake, which filed *Proof of Claim No. 2* on July 23, 2015, asserting a secured claims against Parcel G-1 based on unpaid real estate taxes in the amount of \$10,937.71. Additional post-petition real estate taxes and interest thereon have accrued against Parcel G-1 (collectively, the “Chesapeake Indebtedness”).

6. The Bank of Hampton Roads (“BOHR”) filed *Proof of Claim No. 5* on September 10, 2015 (the “BOHR POC”), and asserts a lien against the Debtor’s real properties securing up to \$10,000,000.00 in indebtedness on account of multiple non-Debtor obligations, which indebtedness amounted to \$24,426,189.85 in principal as of the Filing Date.

7. BBB has used sound business judgment in agreeing to the terms of the Sale Agreement and the conveyance contemplated thereby. BBB has acted in good faith in connection with the Sale Agreement and the conveyances contemplated thereby. The Sale

Agreement is in the best interests of BBB, the Estate, and all of BBB's creditors and parties in interest.

8. BBB diligently and in good faith solicited the best and highest offer for Parcel G-1, and YDD tendered the best and only offer for the same.

9. As evidenced from the endorsement of the parties to this order, each creditor with a lien on Parcel G-1 has consented to the sale proposed under the Sale Agreement.

10. The sale process has been conducted in a non-collusive, fair and good-faith manner, within the parameters contemplated by 11 U.S.C. § 363(m).

11. YDD, as the purchaser in this transaction, has proceeded in good faith and in a non-collusive manner in accordance with 11 U.S.C. § 363(m).

Based on the foregoing, it is hereby ORDERED, ADJUDGED and DECREED that:

- A. The Motion is GRANTED.
- B. The Sale Agreement and all provisions thereof are APPROVED.
- C. BBB is authorized to (i) convey, transfer and assign to YDD its interest in Parcel G-1 in accordance with the Sale Agreement (the "Conveyance"); (ii) execute and deliver to YDD any and all documents necessary to effectuate the Conveyance; and, (ii) in accordance with Fed. R. Bankr. P. 6004(f)(2), BBB is further authorized to and shall execute any instrument necessary to effectuate the transfer under the Sale Agreement (collectively, the "Sale Closing Documents"). W. Preston Fussell, as the sole manager of BBB, is authorized to execute any Sale Closing Documents on behalf of BBB.
- D. Parcel G-1 shall be conveyed, transferred and assigned to YDD, and YDD shall take title to Parcel G-1 free and clear of any lien, claim or interest.

E. The title company or closing agent, whichever the case shall be, presiding over the conveyance under the Sale Agreement is authorized to:

- a. Pay directly at closing all costs of closing, excluding professional fees of the Debtor;
- b. Pay directly to Chesapeake at closing the Chesapeake Indebtedness; and,
- c. Pay directly to BOHR at closing the net proceeds of the sale, or, the Purchase Price less all ordinary and standard costs of closing and the Chesapeake Indebtedness.

F. The closing on the conveyance contemplated under the Sale Agreement shall occur no later than August 15, 2016.

G. The provisions of 11 U.S.C. § 363(n) shall not apply to this sale.

H. The stay of order required under Fed. R. Bankr. P. 6004(h) is waived.

I. The Clerk shall forward a copy of this Order to:

BBB, LLC
c/o Joseph T. Liberatore, Esq.
Crowley, Liberatore, Ryan & Brogan, PC
150 Boush Street, Suite 300
Norfolk, VA 23510

Office of the U.S. Trustee
Room 625, Federal Building
200 Granby Street
Norfolk, VA 23510

ENTERED: Jul 1 2016 _____

/s/ Frank J. Santoro

United States Bankruptcy Judge

DATE: 7/5/16 _____

WE ASK FOR THIS:

/s/ Joseph T. Liberatore
Counsel for the Debtor

/s/ Wendy M. Roenker (permission to affix signature given via e-mail on 06/28/2016 at 4:06 p.m.)
Counsel for the City of Chesapeake

/s/ Peter G. Zemanian (permission to affix signature given via e-mail on 06/28/2016 at 3:41 p.m.)
Counsel for The Bank of Hampton Roads

/s/ Donald C. Schultz (permission to affix signature given via e-mail on 06/29/2016 at 7:45 a.m.)
Counsel for Yacht Drive Development, LLC

SEEN AND NO OBJECTION:

/s/ Kenneth N. Whitehurst III (permission to affix signature given via e-mail on 06/28/2016 at 4:09 p.m.)
Office of the United States Trustee

CERTIFICATE OF ENDORSEMENT

I certify that in accordance with Local Rule 9022-1(C)(1), this Order has been endorsed by all necessary parties.

/s/ Joseph T. Liberatore

EXHIBIT A

Legal Description of Parcel G-1

All that certain lot, piece or parcel of land, with the buildings and improvements thereon and the appurtenances thereunto belonging, lying, situate and being in the Washington Borough of the City of Chesapeake, Virginia, and being known, numbered and designated as Parcels G-1, as shown on that certain plat entitled "Resubdivision of Parcels G, Property of BBB, LLC as shown in M.B. 28, Pg. 26 and a Portion of Parcel 1, Property of BBB, LLC as shown in M. B. 73, Pg. 3, Washington Borough, Chesapeake, Virginia", which said plat is duly recorded in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Map Book 150, at pages 151 and 151A.

IT BEING part the same property conveyed to BBB, L.L.C. by deed of Professional Asset Management in Virginia, Inc., dated 9/25/96, recorded 9/30/96, in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Deed Book 3407, at page 147. And by Deed of Gift from Preston Fussell, dated 4/14/98, recorded 5/7/98, in the aforesaid Clerk's Office in Deed Book 3665, at page 410. (as to Lots G and H)

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is made this 30th day of March, 2016 (the "Execution Date") by and between **BBB, LLC**, a Virginia limited liability company (the "Seller") and **Yacht Drive Development, L.L.C.**, a Virginia limited liability company, or its assigns (the "Buyer").

WITNESSETH:

For and in consideration of the sum of Ten Thousand Dollar (\$10,000) cash in hand paid by Buyer to Seller, the mutual promises and agreements between the parties, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Property. Seller agrees to sell, and Buyer agrees to purchase:

(a) that certain parcel of land located in the Waterway Industrial Parcel in Chesapeake, Virginia (the "City") described as follows and as more particularly described on Exhibit A:

Parcel	Acreage	Tax ID	Address
Parcel G-1	7.33	0350000001147	1301 Yacht Dr.

This parcel will be referred to as the "Land";

(b) those certain industrial land and related improvements, together with all other fixtures, and improvements owned by Seller located on the Land (the "Improvements"); and

(c) all right, title and interest in and to any easements, licenses, privileges, adjacent streets, roads, common walls, alleys or rights of way pertaining to the Land, including but not limited to easements crossing adjacent land that are necessary and required for ingress and egress, or to provide sewer, water, storm drainage and other utilities relating to the use, operation or maintenance of the Land (the "Appurtenances"); and

(d) all right, title and interest in and to all development rights, entitlements, licenses, permits, consents and approvals, and whether governmental or otherwise, relating to the use, operation or maintenance of the Land (the "Rights").

The Land, Improvements, Appurtenances and Rights are collectively referred to in this Agreement as the "Property."

2. Purchase Price.

(a) The purchase price (the "Purchase Price") is equal to Eight Hundred and Fifty Thousand and 00/100 Dollars (\$850,000.00).

(b) The Purchase Price is to be paid in the following manner:

(1) The Buyer will make an earnest money deposit (the "Deposit") by check in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00).

(2) The Escrow Agent selected by Buyer (the "Escrow Agent") will promptly place the Deposit in an interest-bearing account at a federally-insured banking institution. All interest generated by the Deposit will be deemed part of the Deposit. The Escrow Agent will control the Deposit for the duration of the term of this Agreement and will apply the Deposit toward the Purchase Price at Settlement, unless otherwise directed by this Agreement.

Exhibit B

WA

4-18-16
M

(3) The balance of the Purchase Price will be paid by Buyer to Seller by wire transfer of immediately available funds at the time of Settlement unless otherwise provided in this Agreement.

3. Feasibility Period. Buyer will have a period of one hundred twenty ⁶⁰ days (subject to the Feasibility Period extension described below) following the Execution Date (the "Feasibility Period") to determine in its sole and absolute discretion whether the Property is acceptable to Buyer for its intended use (the "Intended Use").

WAT / (C)

(a) Seller Disclosures. Within ten (10) days of the Execution Date, Seller will provide Buyer with all documents, drawings and surveys in its possession or under its control pertaining to the Property, including but not limited to copies of the most recent leases, surveys, title insurance policies, environmental reports or audits, soil or geological reports, governmental correspondence, permits, records, policies of property and casualty insurance, site plans, development plans, construction plans, tax maps, tax bills, assessment information, and all other related materials and information relating to the Property, including without limitation copies of all ad valorem tax statements for the Property for the last three years, all leases and lease commission agreements affecting the Property and actual operating statements for the last three years (the "Disclosures").

(b) Buyer Investigations. Buyer may conduct such studies, inquiries, inspections, tests and other investigations that Buyer deems, in its sole and absolute discretion, appropriate to determine whether it may conduct its Intended Use on the Property, including but not limited to, obtaining surveys, environmental studies, soil analyses, compaction tests, title reports, traffic analyses, demographic studies, zoning letters, utility access letters and management, rehabilitation and construction cost estimates (the "Investigations").

(c) Access and Indemnification. Seller agrees to permit Buyer and its agents, employees, contractors, consultants, successors, assignees or other parties engaged by Buyer to have access to all portions of the Property in connection with the foregoing Investigations which shall be conducted during normal business hours. Buyer shall indemnify and hold Seller harmless from and against any claim, loss, damage, liability or expense (including reasonable attorneys' fees and court costs) which are suffered or incurred by Seller as a direct result of any entry upon the Property for the Investigations. However, Buyer shall not be liable to Seller under the foregoing indemnity for the existing condition of the Property discovered by Buyer in the course of the Investigations.

(d) Extensions. Buyer shall be permitted to extend the Feasibility Study Period for one (1) ten (10) day term at Buyer's sole discretion with written notification to Seller prior to the expiration of the initial Feasibility Study Period.

(e) Termination. In its sole discretion, Buyer may elect to terminate this Agreement by delivering a written notice of termination to Seller at any time prior to 11:59 p.m. Eastern Standard Time on the final day of the Feasibility Period and the same notice applies to any Feasibility Study extension. Upon delivery of such notice, the following provisions (the "Termination Provisions") shall apply: (i) Buyer shall have no further obligation to purchase and Seller shall have no obligation to sell the Property; (ii) the parties shall direct that the Deposit, and all interest accruing on the Deposit, be promptly returned by Escrow Agent to Buyer; and (iii) within five (5) business days from the issuance of the Notice of Termination, Buyer shall forward to Seller all inspection reports for the Property and any such reports shall become the property of Seller.

4. Title and Survey.

(a) Title. Within forty five ³⁰ days after the Execution Date, Buyer will obtain an ALTA Form B Commitment for title insurance (the "Commitment") from a reputable title insurance company (the "Title Company") wherein the Title Company will issue to Buyer, on the Settlement Date, an ALTA owner's title insurance policy insuring Buyer's marketable fee simple title to the Property, subject only to current real estate taxes and easements and restrictions of record which do not adversely affect

WAT / (C)

WAT (C)

Buyer's Intended Use of the Property (the "Permitted Exceptions"). If the Commitment discloses any exception to title that is not a Permitted Exception (the "Title Defects"), then Buyer will promptly notify Seller of the Title Defects in writing along with a copy of the report and associated title examination documents. At any time after Buyer obtains the Commitment, Seller may not record any easement, covenant, condition, restriction or other instrument which affects the Property, without the consent of Buyer, which consent will not be unreasonably withheld or delayed unless the Seller must record to correct a title exception identified by the Buyer.

(b) Survey. By the end of the Feasibility Period, Buyer will obtain and deliver to Title Company a physical survey of the Property (the "Survey"). The Survey will be prepared in such a manner so to allow the Title Company to delete the standard survey exception from the Commitment and in its place insert the specific survey exceptions based on the Survey. If the Survey discloses any easement, encroachment, overlap, gap, gore or other defect or condition which adversely affect Buyer's Intended Use of the Property (the "Survey Defects"), then Buyer will promptly notify Seller of any Survey Defects in writing.

(c) Cure. Within Thirty (30) days of Seller's receipt of Buyer's notice described in Sections 4(a) and 4(b), or in the event Seller causes or creates a Title Defect or Survey Defect after the periods set forth in Sections 4(a) and 4(b), then within Thirty (30) days of Buyer's notice to Seller describing this Defect, Seller must cure the Title Defects and the Survey Defects (jointly, the "Defect(s)"), subject to the following provisions:

(i) If the character of the Defect is such that Seller is unable to cure the Defect, then Buyer will have the right either (A) to terminate this Agreement, in which event the Termination Provisions shall apply, or (B) to waive the objection(s) in writing and proceed to Settlement as set forth in this Agreement. Any defect waived by Buyer pursuant to (B) above shall be deemed to be a Permitted Exception, notwithstanding Buyer's initial objection thereto.

(ii) If the character of the Defect, other than a monetary default, (which Seller must cure), is such that Seller is able to cure the Defect, but elects not to do so, then Buyer will have the right either (A) to terminate this Agreement, in which event the Termination Provisions shall apply, or (B) to cure the Defect at Buyer's sole cost, or (C) to waive the objection(s) in writing and proceed to Settlement as set forth in this Agreement.

5. Settlement. Settlement for the purchase and sale of the Property will be made hereunder at the office of the Seller's attorney on or before thirty (30) days following the expiration or earlier termination of the Feasibility Period, (the "Settlement Date") allowing for the total cure period to be used if necessary then closing will take place no later than three business days after the cure period expires if the cure period exceeds the thirty (30) days following the expiration of the Feasibility Period.

At the time and place for Settlement, Seller will deliver the following to Buyer:

(a) A deed of general warranty from Seller conveying to Buyer good, marketable and insurable fee simple title to the Property, free and clear of all liens, leases, charges and encumbrances and subject only to the Permitted Exceptions (the "Deed");

(b) A certificate of non-foreign status as required by 1445(a) of the Internal Revenue Code (the "FIRPTA Affidavit");

(c) A 1099-S form as required by the Internal Revenue Service (the "1099");

(d) A certificate as to possession of the Property, payment for all services and improvements provided to the Property and any other information required by the title insurance company to issue its owner's title insurance policy without exception to matters customarily addressed by an owner's affidavit (the "Owner's Affidavit");

WPA
mu

(e) A bill of sale conveying to the Buyer any personal property to be conveyed (the "Bill of Sale"); and

(f) Any other documents reasonably required by Buyer, the Title Company, or any lender that may finance the acquisition and development of the Property.

6. Settlement Costs.

(a) General Settlement Costs. Buyer and Seller shall allocate those costs and expenses of Settlement as follows: Seller shall be solely responsible at Settlement for paying the grantor's tax on account of the recordation of the Deed, all roll-back taxes applicable to the Property and all costs associated with the preparation, approval and recordation of any subdivision plats necessary to convey the Property.

(b) Proration. The following items shall be prorated as of the Settlement Date and such proration shall be reflected on the settlement statement prepared by Escrow Agent as an adjustment to the Purchase Price. Such proration shall be made on the basis of a 365-day year, as of 11:59 p.m. on the day preceding the Settlement Date.

(i) Property Taxes. All real estate taxes and assessments for the Property related to the year in which the Settlement shall be prorated as described above.

(ii) Security Deposits. All security and other deposits under the existing leases, if any, including all accrued interest thereon, if permitted by applicable law, shall be credited to Buyer on the settlement statement.

(iii) Utility Charges. All charges, fees and assessments in connection with utilities (the "Utility Charges") attributed to the period prior to Settlement shall be allocated to the Seller. All Utility Charges attributed to the period on and following Settlement shall be allocated to the Buyer. To the extent feasible, Seller shall arrange to have utility service providers read meters on the day immediately prior to the Settlement Date. If the Seller is unable to obtain such reading(s) for any utility serving the Property, the Utility Charges shall be prorated based on the average applicable Utility Charge for the three (3) months preceding Settlement.

(iv) Leasing Commissions. Omitted

7. Conditions. The obligation of Buyer under this Agreement to purchase the Property from Seller is subject to the satisfaction of each of the following conditions (the "Conditions") in the Buyer's sole and absolute discretion:

(a) Title to the Property shall be good and marketable and vested in the name of Seller, and the Title Company shall be prepared to issue, at its standard premium rates, an owner's title insurance policy pursuant to the Commitment insuring the title to the Property in accordance with the Commitment, subject only to the Permitted Exceptions and such other conditions, if any, as may be waived by Buyer as stated herein, in the amount of the Purchase Price.

(b) Seller's representations and warranties shall be true and correct as of the Settlement Date in all material respects and Seller shall have performed all of its covenants and obligations pursuant to this Agreement as of the Settlement Date.

(c) Buyer shall have determined that the Property is satisfactory in all respects for its Intended Use.

(d) Seller shall represent that, and Buyer shall confirm that, the Property contains no environmental, health and/or safety hazard to the best of the Seller's knowledge.

(e) Seller shall represent that to the best of its knowledge, and Buyer shall confirm that the Property and the Seller is not in default or violation of any laws, codes, rules, regulations, ordinances, policies or any other applicable laws, excepting real estate taxes assessed against the Property,

(f) Seller shall have terminated or otherwise cancelled, and there shall be no remaining compensation due third parties, under all service, supply, maintenance, management, leasing and insurance contracts affecting the Property, including, without limitation, Seller's management contract or leasing agreement for the Property, and shall have provided evidence of such termination or cancellation and the payment of all remaining compensation to third parties to the Buyer on or before Settlement.

If any of the above Conditions have not been satisfied or waived by Buyer on or before the Settlement Date, then Buyer will have the right to terminate this Agreement. Should Buyer elect to exercise this right to terminate this Agreement, the Termination Provisions shall apply.

8. Seller's Covenants. Seller covenants and agrees with Buyer from and after the Execution Date so long as this Agreement has not been terminated pursuant to the provisions hereof:

(a) Seller shall not mortgage, pledge or subject all or any portion of the Property to a lien or other encumbrance and shall not cause or permit any easement, restriction, covenant or other document to be executed or recorded that may affect title unless such encumbrance is part of a cure necessary to comply with section 4(c).

(b) Seller shall not subject any portion of the Property to any option, sales contract, lease or any other agreement pursuant to which any party shall have any right to occupy the Property or any portion thereof after the Settlement Date or which will otherwise be binding on Buyer without the written consent of Buyer, which shall not be unreasonably withheld or delayed.

(c) Seller shall not incur, without the written consent of Buyer, any obligation to municipal or state authorities with respect to all or any portion of the Property that will be binding on the Property or any portion thereof (or which will be binding on Buyer or the owner of the Property).

(d) Seller shall not damage the Property or otherwise render the Property unfit for the Intended Use.

9. Possession. Possession of the Property is to be given to Buyer upon Settlement, free and clear of all leases and tenancies and rights of possession of any and all parties other than the Permitted Exceptions.

10. Seller's Representations and Warranties. In order to induce Buyer to enter into this Agreement, Seller, knowing that Buyer is relying hereon, covenants, represents and warrants the following to Buyer:

(a) The Seller, as a condition to the Buyer's commitment to purchase the Property, must convey the Property free and clear of all liens of any monetary nature against the Property.

(b) There are no contracts or agreements, other than this Agreement relating to or affecting the Property that shall be binding on Buyer other than such contracts and agreements as may be included in the Permitted Exceptions and as otherwise disclosed herein.

(c) Seller has the requisite power and authority to enter into this Agreement and is not prohibited from entering into this Agreement by any agreements to which it is a party.

(d) Other than the Bankruptcy Case, as defined below, Seller has no knowledge of any pending or threatened judicial, municipal or administrative proceedings affecting Seller or any portion of the Property or affecting Seller's right to sell the Property.

(e) Seller has no knowledge of the existence of any wetlands which have not been mitigated on the Property or of any violation of any wetlands laws, environmental laws or of any zoning, subdivision or other land use laws on or affecting the Property.

(f) Seller has no knowledge that the Property has been, or is being used for the manufacturing, storage, discharge, release or disposal of hazardous materials.

(g) There are no written agreements except for those matters of record in the chain of title to the Property or, to the best of Seller's knowledge, unwritten agreements, recorded or unrecorded, affecting or relating to the use of the Property by Seller or any tenants. There shall not be in existence at the Settlement Date any lease or other binding obligation affecting or limiting the Property or the use thereof.

(h) Seller has not received any notice of violation of any federal, state, city, or other governmental order or requirement issued by any governmental body or by any action in any court, against or affecting the Property, that has not been fully complied with in all respects to the satisfaction of the governmental authority having jurisdiction.

(i) To Seller's knowledge, there are no special assessments relating to the Property.

(j) Neither the execution nor the delivery of this Agreement or the documents contemplated thereby, nor the consummation of the conveyance of the Property to Buyer, will conflict with or cause a breach of any of the terms and conditions of, or constitute a default under, any agreement, commitment, note, mortgage, lease, bond, license permit or other instrument or obligation by which Seller is bound.

(k) To the best of Seller's knowledge, there are no unwritten agreements for services, management or goods affecting the Property.

(l) To the best of Seller's knowledge (i) there are no "hazardous substances" (as defined in Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 et seq., as amended) at the Property; (ii) there has been no release or threat of release of any such hazardous substance; (iii) the Property is not subject to regulation by any governmental entity as a result of the presence of (A) stored, leaked or spilled petroleum products, (B) underground storage tanks, (C) an accumulation of rubbish, debris or other solid waste, or because of the presence, release, threat of release, discharge, storage, treatment, generation or disposal of any "hazardous waste" (as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended), or "toxic substance" (as defined in the Toxic Substance Control Act, 15 U.S.C. §2601 et seq., as amended), including without limitation asbestos and items or equipment containing polychlorinated biphenyls (PCBs) in excess of 50 parts per million; (iv) no environmental condition exists on the Property that either (A) requires the owner of the Property to report such condition to any authority or agency of the State of Virginia or (B) requires the owner of the Property to make a notation of such condition in any public records or conveyancing instrument upon the conveyance of the Property; (v) to the best of the Seller's knowledge, no underground fuel tanks or storage tanks are present on the Property; and (vi) Seller has not received any written notice that any condition exists on the Property that is characterized by any governmental authority as an actual or potential danger to the environment or public health. Seller will provide to Buyer copies of any notices or documents pertaining to environmental matters, which such notices or documents are in the possession of the Seller, within thirty (30) days after the date this Agreement is signed by Seller.

11. Buyer's Representations and Warranties. In order to induce Seller to enter into this Agreement, Buyer, knowing that Seller is relying hereon, represents and warrants the following to Seller:

(a) Buyer has full power and authority to enter into this Agreement.

(b) There are no actions, suits or proceedings against Buyer that relate to this Agreement or affect Buyer's ability to perform hereunder.

(c) No bankruptcy or similar proceedings are pending or threatened against Buyer.

12. Risk of Loss/Condemnation. The risk of any loss of or damage to the Property, or the taking of the Property or any part thereof by eminent domain prior to Settlement, shall be borne by Seller. In the event, prior to the Settlement Date, the Property or any portion thereof is damaged or taken by eminent domain, then Buyer may, at its option, either (a) terminate this Agreement, in which event the Termination Provisions shall apply; or (b) purchase the Property in accordance with the terms and provisions of this Agreement, in which event all insurance proceeds or condemnation awards payable as a result of such damage or taking and attributable to damage or taking of the Property or any part thereof shall be delivered and/or assigned by Seller to Buyer at Settlement.

13. Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be sent in the manner provided below. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be delivered (a) if sent by messenger, hand-delivered, upon receipt or refusal to the party to whom the notice is directed, (b) upon receipt or refusal if sent by overnight courier, shipping charges prepaid, with request for next business day delivery; (c) upon receipt or refusal after deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid; or (d) by facsimile with confirmation by the sender of receipt by the addressee. All such notices shall be addressed as follows (or to such other address as the parties may specify by notice given pursuant to this Section):

BUYER Name: Yacht Drive Development, L.L.C.
Address: 316 Yacht Drive
City/State/Zip: Chesapeake, VA 23320
Contact Person: Paul Ogorchock
Telephone: (757) 545-5215
Fax: (757) 545-6296
E-mail Address: Paul@CPS Precast.com


With Copy to: James L. Chapman, IV
Crenshaw, Ware & Martin, P.L.C.
150 W. Main Street, Suite 1500
Norfolk, VA 23510
Telephone: (757) 623-3000
Fax: (757) 623-5735
E-mail Address: jchapman@cwm-law.com

SELLER Name: BBB, LLC
Address: 1431 Precon Drive
City/State/Zip: Chesapeake, VA 23320
Contact Person: Mr. Preston Fussell
Telephone: (757) 545-0004
Fax: (757) 545-0060
E-mail Address: ~~preconone@aol.com~~

*PFUSSAL@WATERWAYMATERIALS.COM
BSEEKELY@WATERWAYMATERIALS.COM
JFULLER@PRECONMARINE.COM*

With Copy to: Firm Name: The Hartley Law Group, P C
Address: 636 Cedar Road
City/State/Zip: Chesapeake, VA 23322
Contact Name: Mr. Albert Hartley, Esquire
Telephone: (757) 802-3732
E-mail Address: albert@hartleylawgroup.com

14. Successors/Assigns. The terms of this Agreement shall bind and inure to the benefit of the parties, their successors, heirs or assigns. Buyer shall have the right to assign this Agreement without prior written consent of Seller.

WPA 

15. Survival. It is understood and agreed that whether or not it is specifically provided herein, any provision of this Agreement which by its nature and effect is required to be kept, observed, or performed after termination of this Agreement for any reason, including but not limited to any default and indemnity described in this Agreement, shall survive the Settlement Date, delivery and recording of the Deed hereunder shall not be merged therein, but shall be and remain binding upon and for the benefit of the parties until fully observed, kept or performed.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and may not be modified or amended except by written instrument executed by the parties hereto.

17. Default.

(a) Default by Seller. If Seller is in default or breaches the terms or provisions of this Agreement, then Buyer shall give Seller written notice specifying the nature of the default. Seller shall have ten (10) business days after receipt of Buyer's notice of default within which to cure the specified default. If Seller does not cure such default within the ten (10) business day period, or if such default is not waived in writing by Buyer, then Buyer, at its option, may either (a) terminate this Agreement and be entitled to the immediate return of the Deposit, or, (b) enforce specific performance of this Agreement except to the extent prohibited by the Bankruptcy Case, or (c) waive such default by Seller and close the purchase, notwithstanding such default by Seller.

(b) Default by Buyer. If Buyer is in default or breaches the terms or provisions of this Agreement, then Seller shall give Buyer written notice specifying the nature of the default. Buyer shall then have ten (10) Business Days after receipt of Seller's notice of default in which to cure the specified default. If Buyer does not cure such default within the ten (10) Business Day period, or if such default is not waived in writing by Seller, then Seller, at its option, may either (a) be entitled to retain the Deposit, as liquidated damages (and not as a penalty) as Seller's sole remedy and relief or (b) waive such default by Buyer and close the purchase, notwithstanding such default by Buyer. In the event that Seller shall elect to retain the Deposit, then such Deposit shall be deemed liquidated damages, as it would be difficult to calculate on the date hereof, the amount of actual damages for such breach and agree that these sums represent reasonable compensation to Seller for such breach.

18. Severability. Should any one or more of the provisions contained in this Agreement or in any of the documents or instruments delivered pursuant hereto be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any of the remaining provisions contained herein and therein shall not be affected or impaired thereby.

19. Applicable Law. This Agreement shall be construed, interpreted, applied and performed in accordance with the laws of the Commonwealth of Virginia.

20. Gender and Number. For the purposes of this Agreement, the singular shall be deemed to include the plural and vice versa and the neuter gender shall be deemed to include the masculine and feminine as the context and parties may require.

21. Confidentiality. Except as may be required herein or by law, each party shall keep this Agreement and its terms confidential and shall not disclose the same to any third party (except attorneys, accountants, lenders or consultants hired by them) without the express written consent of the other party.

22. Reserved.

23. Exhibits. The Exhibits referenced in and attached to this Agreement are incorporated in, and made a part of, this Agreement for all purposes.

24. Calculation of Dates. If the final day of any period or any date of performance under this Agreement falls on a date which is not a business day, then the final day of the period or the date of

performance, as applicable, shall be extended to the next day which is a Business Day. For purposes of this Section, a "business day" means Monday through Friday, U.S. federal holidays excepted. The Execution Date shall be the later of the date on which this Agreement is signed (and any changes initialed) by the Seller and the Buyer.

25. No Third Party Beneficiary. This Agreement is solely between Seller and Buyer and no other party shall be entitled to rely upon any provision hereof for any purpose whatsoever.

26. Limitation on Liability. Buyer and Seller expressly agree that the obligations and liabilities of Buyer and Seller under this Agreement and any document referenced herein shall not constitute personal obligations of the officers, directors, employees, agents, trustees, partners, members, representatives, stockholders or other principals and representatives of Seller or Buyer. The limitations of liability contained in this Section shall apply equally and inure to the benefit of Seller's and Buyer's present and future officers, directors, trustees, shareholders, agents and employees, and their respective heirs, successors and assigns. Seller acknowledges that any such liability of Buyer shall be limited to the Deposit, and that such Deposit shall constitute its sole liquidated remedy under this Agreement.

27. Force Majeure. Irrespective of the dates or other deadlines set forth in this Agreement, neither party shall be obligated to meet such dates, deadlines, payment or purchase obligations in the event of Force Majeure which has a direct, adverse impact on the obligated party's ability to meet such dates, deadlines, payment or purchase obligations. For purposes of this Section, Force Majeure shall be defined as the actual period of any delay caused by any strike or labor dispute not due to any act or omission of the party whose performance is required by the terms of the Agreement, riot, terrorist attack, or other civil disorder, national or local emergency, other act of God, death or other cause or casualty beyond the party's reasonable control. Accordingly, any date or deadline set forth herein shall be extended for the period the party is delayed as the result of a force majeure.

28. Brokerage. Seller and Buyer acknowledge and agree that no brokers have been involved in procuring this Agreement or facilitating the sale contemplated in this Agreement. Each party agrees to indemnify and hold harmless the other party from and against any and all losses, liens, claims, judgments, liabilities, costs, expenses or damages (including reasonable attorneys' fees and court costs) of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party on its behalf with any broker, finder or other real estate service provider in connection with this Agreement.

29. Litigation.

(a) Attorneys' Fees. In the event of any litigation arising out of or under this Agreement and/or out of Buyer's ownership, development or construction upon the Property, the prevailing party shall be entitled to collect from the non-prevailing party, subject to the factfinder's discretion to award, reasonable attorneys' fees and costs.

(b) Jurisdiction. Buyer and Seller hereby submit to the jurisdiction of the Civil Courts of the Commonwealth of Virginia and the United States District Court for the Eastern District of Virginia, including the Bankruptcy Court, in respect of any suit or other proceeding brought in connection with or arising out of this Agreement.

(c) Waiver of Jury Trial. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE, TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT EXECUTED IN CONNECTION HERewith OR RELATED HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS TRANSACTION.

30. Counterpart and Facsimile Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement. Confirmation of execution and delivery by telecopy of a facsimile signature page shall constitute a legal, valid, and binding execution of this Agreement by any party so confirming.

31. 1031 Exchanges.

(a) Either party may consummate the sale of the Property as part of a so-called like kind deferred or simultaneous exchange (the "Exchange") pursuant to § 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that: (i) the settlement shall not be delayed or affected by reason of the Exchange; (ii) neither party shall incur any unreimbursed costs or expenses in connection with the Exchange; (iii) neither party shall be required to acquire or hold title to any real property (other than the Property) for purposes of consummating the Exchange; and (iv) performance by a qualified intermediary hereunder shall be deemed performance by the exchanging party.

(b) Each party shall fully cooperate, but at no unreimbursed cost, added obligations or risk of liability, with the other in effectuating the other's tax free exchange even if the necessary steps or actions in which such cooperation is requested, are not listed above. Without limiting the foregoing, Seller shall not withhold its consent to assignment of this Contract to Buyer's exchange accommodation titleholder, or qualified intermediary, or affiliate desiring to achieve a tax-free exchange, but no such assignment shall relieve Buyer of its duties, obligations and liabilities to Seller.

32. Bankruptcy. Seller filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Virginia, Norfolk Division (the "Bankruptcy Court"), which bankruptcy case is currently pending under Case No. 15-71735-FJS (the "Bankruptcy Case"). Seller is currently a "debtor in possession" as defined in Bankruptcy Code § 1101 and maintains those certain rights, limitations and duties required of a debtor in possession under the Bankruptcy Code. Pursuant to these requirements, including, but not limited to, 11 U.S.C. § 363(b), the Seller may not sell or convey its assets outside of the ordinary course of business unless, after notice and a hearing, the Seller obtains prior approval of such sale or conveyance from the Bankruptcy Court. Accordingly, the terms and conditions of this Agreement are subject, in their entirety, to the approval of the Bankruptcy Court.

33. Crushed Concrete. In further consideration of the Purchase Price, Seller agrees, at any times after the Settlement Date requested by the Buyer, to provide Buyer up to Ten Thousand Tons (10,000) of processed crushed concrete, by crushing concrete feedstock when Buyer delivers such concrete feedstock to Buyer. Concrete feedstock will be provided and delivered to Waterway Materials, LLC's processing facility at Buyer's expense. Once crushed, Buyer is responsible for the transportation of the crushed concrete to a final destination.

[SIGNATURE PAGE SHALL FOLLOW]

Handwritten signatures in black ink, appearing to be initials or names, located in the bottom right corner of the page.

WITNESS the following signatures and seals.

SELLER:

BBB, LLC

Date: 4-27-16

By: W Preston Fussell (SEAL)

Name: W. Preston Fussell
Title: MANAGING MEMBER

BUYER:

YACHT DRIVE DEVELOPMENT, L.L.C.,
a Virginia limited liability company

Date: 4-18-16

By: [Signature] (SEAL)

Name: Paul F. Ogorehock
Title: Manager

WPA [Signature]

Exhibit A

Need Property Description before execution.

WPH *M*