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### CAPE VERDE PERSHING BAY LLC VS FERRETTI GROUP OF AMERICA LLC

**Local Case Number:** 2017-018517-CA-01

**Filing Date:** 08/01/2017

**State Case Number:** 132017CA018517000001

**Case Type:** Contract & Indebtedness

**Consolidated Case No.:** N/A

**Judicial Section:** CA23

**Case Status:** OPEN

Parties

Number of Parties: 2 +

Hearing Details

Number of Hearing: 0 +

Dockets

Dockets Retrieved: 10 +

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IN THE CIRCUIT COURT FOR THE  
11<sup>th</sup> JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CAPE VERDE PERSHING BAY, LLC,  
a Delaware limited liability company,

CASE NO:

vs.

FERRETTI GROUP OF AMERICA, LLC,  
a Florida limited liability company,

Defendant.

---

**COMPLAINT**

Plaintiff, CAPE VERDE PERSHING BAY, LLC, a Delaware limited liability company, sues Defendant, FERRETTI GROUP OF AMERICA, LLC, a Florida limited liability company, and states:

1. This is an action for damages which exceed \$15,000, exclusive of interest, costs and attorney's fees.

2. Venue is proper in Miami-Dade County, Florida, because the Purchase Agreement between the parties, more particularly described in paragraph 5 below, and upon which this action is brought, calls for venue to exclusively be in Miami-Dade County for any action arising out of or related to the Purchase Agreement.

3. Defendant is, and has been at all times material, in the business of designing, building and selling luxury motor yachts.

4. In 2015, Plaintiff purchased a 2015 Pershing 62' motor yacht from Defendant, for which Plaintiff paid \$2,750,000. The Pershing 62' had overheating problems with the starboard engine which prevented Plaintiff from using the yacht and

which could not be rectified. As a result, and after seven months of not being able to use the yacht, Plaintiff tendered the Pershing 62' back to Defendant in January, 2016.

5. On or about February 16, 2016, Plaintiff and Defendant entered into that certain Ferretti Group of America, LLC Purchase and Sale Agreement for New Yacht, with addenda ("the Purchase Agreement"), a copy of which is attached hereto as Exhibit "A".

6. The Purchase Agreement provided, *inter alia*, for Plaintiff to purchase a 2016 Riva Perseo 76' motor yacht from Defendant for the purchase price of \$4,850,000; for Plaintiff to deliver possession of and title to the Pershing 62' to Defendant in exchange for a trade allowance of \$2,750,000; for Plaintiff to receive a credit against the purchase price of the Riva Perseo 76' in the amount of the trade allowance; for the \$2,750,000 credit to be treated as the Plaintiff's deposit toward the purchase price; and for the closing date and estimated delivery date to be on or before May 18, 2016.

7. On or about February 19, 2016, Plaintiff's principal and Plaintiff's intended captain inspected the Riva Perseo 76' in Florida, determined that the yacht had multiple deficiencies and discussed those deficiencies with Defendant. Plaintiff developed a deficiencies list and mailed it to Defendant on or about March 2, 2016.

8. In March, 2016, Pursuant to the Purchase Agreement, Plaintiff delivered possession of and title to the Pershing 62' to Defendant.

9. In March, 2016, Plaintiff retained World Yacht Survey to survey the Riva Perseo 76'. In spite of repeated efforts made in March and April of 2016, World Yacht Survey was not given access to the Riva Perseo 76' to commence its two day survey until on or about April 28, 2016. World Yacht Survey issued survey reports on April 28,

2016 and May 2, 2016, both of which were immediately emailed to Defendant. The Riva Perseo 76' continued to have multiple deficiencies.

10. The closing date/estimated delivery date of May 18, 2016 came and went without the Riva Perseo 76' being ready for delivery to Plaintiff.

11. On July 26, 2016, Defendant informed Plaintiff that the Riva Perseo 76' was ready for delivery and that the transaction was ready to be closed. By this time, Plaintiff was very discouraged by the fact that he once again had been involved in a problematic transaction with Defendant for the purchase of a yacht. Plaintiff did not take delivery and did not close the purchase.

12. Pursuant to an email from Defendant to Plaintiff dated September 2, 2016, Defendant canceled the Purchase Agreement as of September 15, 2016. Accordingly, the Riva Perseo 76' was never delivered to Plaintiff.

13. Defendant retained the entire deposit of \$2,750,000, ostensibly because of the provision at paragraph 13 of the Purchase Agreement which states, "If Buyer [Plaintiff] (i) refuses to take delivery, (ii) pay any balance when due under the terms of this Agreement, or (iii) fails to perform as set forth herein, such shall be deemed a repudiation and cancellation of this Agreement. FGA [Defendant] shall in any such event have the right to cancel this Agreement without further notice and retain the Deposit as liquidated and agreed damages." (Emphasis added.)

14. The \$2,750,000 deposit amount equals 56.7% of the purchase price. The liquidated damages clause is an unenforceable penalty under Florida law because it provides for a sum that is so grossly disproportionate to any damages that might reasonably be expected to follow from a breach of the Purchase Agreement by Plaintiff

as to show that it was intended only to induce full performance by Plaintiff rather than to liquidate Defendant's damages. Because the liquidated damages clause is an unenforceable penalty, Defendant may only recover actual damages that it pleads and proves.

15. Under the circumstances, Defendant has breached the Purchase Agreement by retaining the entire \$2,750,000 deposit pursuant to an unenforceable liquidated damages clause.

16. As a result of Defendant's breach, Plaintiff has been damaged by the amount of \$2,750,000 less the amount of Defendant's actual damages which may be pled and proven by Defendant. The Plaintiff's damages are in excess of \$15,000.

17. All conditions precedent to the commencement of this action have been performed, have occurred, or have been waived.

WHEREFORE, Plaintiff demands judgment against Defendant for damages, pre-judgment interest and Plaintiff's costs of this action.

MORGAN, OLSEN & OLSEN, LLP  
Attorneys for Plaintiff  
633 S. Federal Highway, Suite 400A  
Fort Lauderdale, FL 33301  
Phone: (954) 524-3111 / Fax: (954) 463-3570  
Email: [golsen@morganolsen.com](mailto:golsen@morganolsen.com)  
Email: [ldurbin@morganolsen.com](mailto:ldurbin@morganolsen.com)

/s/ Gregory G. Olsen  
GREGORY G. OLSEN, ESQUIRE  
F.B.N. 247251

Date: August 1, 2017

**FERRETTI GROUP OF AMERICA, LLC**  
**PURCHASE AND SALE AGREEMENT FOR NEW YACHT**

Buyer's Name: Cape Verder Pershing Bay LLC and/or assigns		Base Price:	\$5,680,502.18
Address: 3511 Silverside Road, Suite 105		Factory Options:	
City, State & Zip: Wilmington, DE 19810		Subtotal:	\$5,680,502.18
Home Phone:	Work Phone:	Other: (Discount)	(\$830,502.18)
Cell Phone:		Subtotal:	\$4,850,000.00
Email: Sonny@astanierprises.com		Dealer Installed Options:	
Tracking Number: K76-03		Dealer Installed Options:	
Date: February 13, 2016		Freight/Make Ready/Launch:	
Sales Location: California		Subtotal:	\$4,850,000.00
Sales Executive: Joel Romero		Trade Allowance (See Addendum):	(\$2,750,000.00)
Yacht Make/Model: 2016 Riva Perseo		Net Cash Due:	\$2,100,000.00
Engines: T-MAN 12V 1800 HP		Florida Sales Tax:	
Engine Hours:	Port:	County Surtax:	
	Stbd:	Trade/Adm'n. Delivery Expenses:	
Place of Delivery: California		Total Amount Due:	\$2,100,000.00
Closing Date: On or before May 18, 2016		Less Initial Deposit: See	
Estimated Delivery Date: On or before May 18, 2016		addendum #2	
		<b>BALANCE DUE:</b>	<b>\$2,100,000.00</b>

Ferretti Group of America, LLC ("FGA") agrees to sell to Buyer, and Buyer agrees to purchase, the Yacht described above on the terms and conditions set forth herein (the "Agreement") for the Purchase Price (the "Total Amount Due" above, less taxes). This Agreement is not binding on FGA unless signed by a corporate officer of FGA, the full See addendum #2 Deposit is paid and the funds clear in FGA's bank account, and no other person is authorized to sign this Agreement on its behalf.

**NEW YACHT IN INVENTORY:** A Deposit of \_\_\_\_\_ is due now. If Deposit received is less than \_\_\_\_\_, Buyer shall complete Deposit within five (5) business days from the date of this Agreement. The balance of the Purchase Price and taxes (the "Balance Due" above) are due and payable at Closing.

**NEW YACHT ON ORDER:** A Deposit of See addendum #2 is due now. If Deposit received is less than See addendum #2, Buyer shall complete Deposit within five (5) business days from the date of this Agreement. The balance of the Purchase Price and taxes (the "Balance Due" above) are due either five (5) days prior to U.S.-based manufacturer's shipment of Yacht or ten (10) days prior to foreign manufacturer's shipment. FGA will give Buyer two (2) weeks' prior notice of balance due date. All monies received from the Buyer shall be wired to the respective shipyard in order to be applied to the construction of the vessel.

**L. Terms of Payment.** Buyer shall pay for the Yacht as provided in this Agreement. Prior to Closing, Buyer shall pay the Balance Due in full. Payment for additional items and services ordered by Buyer after execution of this Agreement will be subject to additional Orders, specifying payment terms. All payments will be in U.S. Dollars and made by wire transfer and will not be credited to Buyer until deposited and cleared into FGA's account. If at Buyer's request, FGA agrees to extend the Closing date, the balance due will accrue interest at the rate of one-and-one-half-percent (1 1/2%) per month and will be payable together with accrued interest at Closing. An extension of the payment deadline will not be deemed a waiver by FGA of any of its rights.

**2. Delivery; Delivery Date; Conditions to Closing.** Delivery will be made at FGA's place of business, unless otherwise agreed by FGA in writing. The Estimated Delivery Date is subject to FGA's ability to obtain the Yacht from the manufacturer and the non-occurrence of force majeure events such as, for example and without limitation, war, terrorism acts, strikes, accidents, tropical storms, hurricanes, natural disasters, or other causes beyond FGA's control ("Force Majeure"). Unless FGA receives Buyer's full payment, FGA may postpone inspection, delivery and Closing. Buyer shall not assert, and hereby waives, claims for damages resulting from FGA's inability to deliver the Yacht by the Estimated Delivery Date. If a Force Majeure event occurs, the delivery terms (and all time periods referred to in this Agreement) will be considered extended by as many work days as necessary, or if the Force Majeure causes a total or constructive loss of the Yacht, then this Agreement will be deemed terminated, the respective rights and obligations of each party will cease to exist and be of no further force and effect and neither party shall be entitled to, and hereby waives, any claim for specific performance, damages, compensation, interest, or any other claims whatsoever. FGA will deliver the Yacht and all documentation only after FGA receives full payment. If Buyer requests a closing off-shore of the United States, FGA may, at its sole discretion, agree to deliver the Yacht to Bimini, Bahamas, for closing provided Buyer pays FGA its then current off-shore closing fee (as of 10/15/08 \$2,800.00, but which may vary from time-to-time) which includes cruising permit, crew expenses, airfare for crew return, and administrative fees, plus expenses associated with making the Yacht available for the off-shore closing in Bimini, Bahamas (i.e., dockage, notary, etc.). If Buyer refuses delivery after FGA notifies Buyer that Yacht is ready for delivery,

Initials: Buyer: 

Ferretti: 

Feb. 13, 2016

**EXHIBIT "A"**

Buyer agrees to pay all charges for storage and proper maintenance of the Yacht, insurance and any other incidental costs that FGA believes, in its sole discretion, to be necessary, from the date FGA notifies Buyer, that the Yacht is ready for delivery until the date delivery occurs and Buyer removes the Yacht from FGA's premises or until the date FGA declares Buyer to have repudiated this Agreement, as a condition of such subsequent delivery. Buyer shall also be responsible for interest at the rate of one-and one-half-percent (1 1/2%) per month on the unpaid balance until the date delivery occurs, which interest shall be payable at the time of such subsequent delivery. In the event of an offshore sale FGA is solely entitled, and Buyer has no claim, to any applicable drawback of the U.S. Customs duties. If Buyer is a corporate entity, Buyer shall at least three (3) days prior to Closing provide, in a form satisfactory to FGA, (a) proof that Buyer is in good standing under the laws of the state or government under which Buyer has been formed; (b) a consent action or resolution demonstrating Buyer's duly authorized decision to purchase the Yacht; and (c) a power of attorney demonstrating the authority of the individual accepting the Yacht.

3. **Price.** The Purchase Price for the Yacht if not in inventory is based upon information provided FGA by the manufacturer of the Yacht. FGA is not obligated to sell the Yacht at the Purchase Price if the manufacturer later increases its price to FGA. FGA shall advise Buyer of any price change after the date of this Agreement. Buyer shall have five (5) days from notification of price change to cancel the Agreement by giving written notice to FGA. Buyer's failure to cancel the Agreement will operate as Buyer's acceptance of the price change and FGA will rely upon that acceptance to proceed with accepting delivery of the Yacht from the manufacturer.

4. **Trade-In Yacht.** If a Trade Allowance is written in the box above, the terms of such trade-in and the amount of such allowance shall be governed by FGA's standard Trade-In Vessel Addendum, as attached hereto and incorporated herein.

5. **Changes; Modifications to Yacht.** Buyer's request for changes or modifications to this Agreement must be presented to FGA in writing, and are subject to manufacturer's ability to incorporate said changes in production. No changes or modifications to this Agreement or requests for such as to the Yacht will be valid unless in writing signed by both parties. Buyer (a) understands that the manufacturer retains the right to make changes in the model or design of the Yacht, as well as its accessories, at any time; (b) agrees that any such changes will not obligate either FGA or the manufacturer to make corresponding changes in the particular Yacht, engine, or accessories covered by this Agreement either before or after delivery thereof to Buyer; and (c) acknowledges that neither FGA nor the manufacturer make any representations or warranties concerning the Yacht's specific model year.

6. **Financing.** The Agreement is not contingent upon Buyer obtaining financing to purchase the Yacht. Buyer acknowledges that FGA has made no representations or warranties with respect to Buyer's ability to obtain financing.

7. **No Reliance on Other Statements.** Other than as expressly stated herein, all statements regarding performance, including, without limitation, speed, handling, or fuel consumption made by FGA, manufacturer, or any other person, or contained in advertisements, brochures, and other publications (the "Statements") are estimates and are not guaranteed as each vessel's overall performance will vary depending upon the operator of the vessel, added equipment, and other factors. Buyer acknowledges that Buyer is not relying on any such Statements and has not been induced by such to enter into this Agreement.

8. **Acceptance of Technical Specifications.** Buyer understands and acknowledges that the Yacht and its components are built to manufacturer's plans and specifications, in manufacturer's sole discretion with respect to construction methodology and practice as well as systems designs, including, without limitation, specifications for hull structure, mechanical systems, electrical systems and hull design ("Technical Specifications"). Buyer accepts the Technical Specifications in full. The interpretation and implementation of the Technical Specifications shall be in accordance with manufacturer's standards, and not pursuant to any classification society or trade association's standards or similar codes except if, and as, specifically set forth in the Technical Specifications.

9. **THE WARRANTY ON THIS YACHT IS GIVEN SOLELY BY THE MANUFACTURER. BUYER UNDERSTANDS AND ACKNOWLEDGES THAT (a) FGA IS NOT A MANUFACTURER OF YACHTS; (b) THE YACHT IS BEING WARRANTED SOLELY BY FERRETTI GROUP USA, A SEPARATE LEGAL ENTITY, AND ITS COMPONENTS ARE WARRANTED SOLELY BY THE MANUFACTURER OF PARTS AND EQUIPMENT SUPPLIED TO THE YACHT MANUFACTURER BY OTHERS IN ACCORDANCE WITH PUBLISHED WARRANTIES BUYER SHALL RECEIVE AT TIME OF PURCHASE; (c) FGA DOES NOT PROVIDE ANY WARRANTIES AS THE WARRANTIES OF FERRETTI GROUP USA AND SUPPLIERS ARE THE SOLE AND EXCLUSIVE WARRANTIES, EITHER EXPRESS OR IMPLIED, (d) ANY AFFIRMATION OF FACT OR PROMISE WRITTEN OR VERBAL MADE BY FGA, FERRETTI GROUP USA, OR MANUFACTURER WILL NOT BE DEEMED TO CREATE AN EXPRESS WARRANTY THAT THE YACHT WILL CONFORM TO THE AFFIRMATION OR PROMISE; (e) ANY DESCRIPTION OF YACHT IS FOR THE SOLE PURPOSE OF IDENTIFYING IT AND WILL NOT BE DEEMED TO CREATE AN EXPRESS WARRANTY THAT THE YACHT WILL CONFORM TO THE SAMPLE OR MODEL; (f) NO AFFIRMATION, PROMISE, DESCRIPTION, OR BROCHURE, OR MODEL WILL BE DEEMED PART OF THE BASIS OF THE BARGAIN; (g) THE SALE IS MADE ON THE EXPRESS UNDERSTANDING THAT THERE IS NO EXPRESS OR IMPLIED WARRANTY THAT THE YACHT WILL BE MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE; (h) FGA HEREBY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY; (i) IN NO EVENT WILL FGA BE LIABLE TO BUYER FOR ANY DAMAGE ARISING FROM BUYER'S PURCHASE AND USE OF SAID YACHT, INCLUDING, WITHOUT LIMITATION, INCIDENTAL AND CONSEQUENTIAL DAMAGES; (j) BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM ARISING FROM A DEFECT IN THE YACHT OR ITS COMPONENTS SHALL BE PURSUANT TO THE TERMS AND CONDITIONS OF THE APPLICABLE PUBLISHED WARRANTIES; (k) A COPY OF FERRETTI GROUP USA'S LIMITED WARRANTY IS ATTACHED HERETO AND THAT COPIES OF THE ENGINE, TRANSMISSION AND COMPONENT WARRANTIES HAVE BEEN MADE AVAILABLE TO BUYER FOR REVIEW AND (l) IN THE EVENT YACHT IS A DEMONSTRATOR, BUYER ACKNOWLEDGES THAT IT HAS BEEN PURCHASED "AS IS" AND "WITH ALL FAULTS" AND THAT NO WARRANTIES FOR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSED OR IMPLIED**

Initials: Buyer:



Ferretti:



10 Sales and Use Tax. If FGA collects no sales tax, Buyer agrees (a) to read and become familiar with and comply with all Florida law and regulations concerning sales and use tax exemptions, including, without limitation, the Florida Department of Revenue Rule 12A-1.007(9), Florida Administrative Code, and §212.05, Florida Statutes; (b) to remove the Yacht from the State of Florida; (c) to meet applicable non-residency requirements; (d) to execute an exemption affidavit in a form satisfactory to FGA; and (e) to furnish FGA and/or the Department of Revenue with required proof that the Yacht has been removed from the state and is titled, documented, or registered outside Florida.

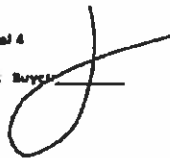
11. Assignment. Buyer may not assign this Agreement without FGA's consent, which, if given, shall require Buyer and Buyer's assignee to represent and warrant (a) that assignee, if an entity, is in good standing under the laws of the state or government under which assignee has been formed, and (b) that until after Closing, Buyer shall remain bound by this Agreement.

12 Indemnification. Buyer hereby releases, indemnifies, and holds harmless FGA, its officers, directors, shareholders, salespersons, employees and agents from and against (a) any loss, damage, liability, legal action or claim of whatever nature arising out of this Agreement and other relationships provided for in this Agreement, including, without limitation, any such loss, damage, liability, legal action or claim arising out of any misrepresentation or breach of any representation, warranty or covenant by Buyer of any representation, warranty, or covenant set forth in this Agreement and (b) any Taxes that may become due as a result of the sale of the Yacht or incurred under, or imposed by any provision of federal, state, or local law or regulation, or common law. This section survives beyond the Closing and delivery of the Yacht.

13. Limitations; Liquidated Damages. Neither party shall be liable to the other for special, exemplary, consequential, or incidental damages under any circumstances or for any reason related to this Agreement. If FGA is unable to deliver the Yacht as set forth herein, FGA shall refund all deposit monies paid by Buyer, which will be Buyer's sole and exclusive remedy. If Buyer (i) refuses to take delivery, (ii) pay any balance when due under the terms of this Agreement, or (iii) fails to perform as set forth herein, such shall be deemed a repudiation and cancellation of this Agreement. FGA shall in any such event have the right to cancel this Agreement without further notice and retain the Deposit as liquidated and agreed damages. Thereupon, the parties shall be relieved of all other obligations to each other under this Agreement. Buyer agrees that the amount of such liquidated damages is reasonable in light of the anticipated or actual harm caused by the failure, difficulty of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

14. Confidentiality. Buyer agrees not to disclose the purchase price, except to the extent required by law. This clause survives Closing.

15. Miscellaneous. (a) Waiver. No claim or right arising out of this Agreement can be waived or discharged by one party, in whole or in part, unless in writing nor shall any waiver be applicable except in the specific instance for which it is given. (b) Entire Agreement. This Agreement sets forth the entire agreement between the parties and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter; supersedes all prior and contemporaneous discussions, understandings, or agreements, whether written or oral, between the parties with respect to its subject matter; and may not be amended, supplemented, or otherwise modified, unless duly executed by or on behalf of each party (in the case of FGA, by an officer of FGA). (c) Binding Effect. This Agreement is binding upon, inures to the benefit of, and is enforceable by the parties to this Agreement and their respective successors and authorized assigns. (d) No Third Party Beneficiary. It is not the intention of the parties to confer third-party beneficiary rights upon any other person. (e) Disputes. Any proceeding arising out of or relating to this Agreement will be brought in the courts of the State of Florida, Miami Dade County, or, if it has or can acquire jurisdiction, in the United States District Court for the Southern District of Florida, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court and agrees not to bring any proceeding arising out of or relating to this Agreement in any other court. Any and all process may be served upon Buyer in any action, suit or proceeding arising in connection with this Agreement by mailing the complaint and summons to the Florida Secretary of State and to party's address on file via certified mail, return receipt requested. Such service of process will have the same effect as if the party being served were a resident in the State of Florida and had been lawfully served with such process in such jurisdiction. The parties hereby waive all claims of error by reason of such service. Nothing herein affects the right of any party to service process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the other in any other jurisdiction to enforce judgments or rulings of the aforementioned courts. (f) Governing Law. This Agreement will be governed by and construed exclusively under the laws of the State of Florida, without regard to conflicts-of-laws principles that would require the application of any other law. (g) Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable; (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision, or by its severance herefrom; and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible. (h) Counterparts; Effectiveness. This Agreement may be signed in any number of identical counterparts, each of which will be an original (including signatures delivered via facsimile or electronic mail) with the same effect as if the signatures were upon the same instrument. The parties may deliver this Agreement and the other documents required to consummate the transaction contemplated herein by facsimile or electronic mail and each party shall be permitted to rely upon the signatures so transmitted to the same extent and effect as if they were original signatures. This Agreement will become effective when each party receives a counterpart signed by each other party. (i) Notices. All notices to FGA will be sent to the location above and FGA's





headquarters below. All notices to Buyer will go to Buyer's address above, except that service of process may also be affected upon Buyer as provided in this section. Notices must be in writing and delivered by Certified Mail, Return Receipt Requested, or by nationally recognized overnight courier service, or by hand, in each case with proof of delivery retained. Notices shall be effective upon delivery. (j) Headings. The headings herein are for convenience of reference only and will not be deemed to be part of the substance of this Agreement. (k) Interpretation. The Buyer has had an opportunity to consult with counsel of his choice prior to signing this Agreement. If an ambiguity or a question of intent or interpretation arises, no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement. (l) Waiver of Right to Trial by Jury. HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL OF THEIR CHOICE, THE PARTIES IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM EITHER MAY HAVE ARISING UNDER OR IN ANY WAY CONNECTED TO THIS AGREEMENT OR THE YACHT. This section survives Closing and termination of this Agreement.

16. Broker. Buyer warrants to FGA that it has not worked with any broker (other than an FGA broker) who might claim a commission in connection with this transaction other than Joel Romero (Name of Cooperating Broker, if any).

17. EXECUTION BY FACSIMILE. Seller and Buyer hereby agree that this document may be transmitted between them by facsimile machine. The parties intend that faxed signatures constitute original signatures and that a faxed document containing the signatures (original or faxed) of all parties is binding on the parties.

18. Other Provisions

S/c subject to personal inspection and sea trial on or before February 26, 2015.

Upon acceptance of vessel, buyer will transfer ownership of trade-in vessel (7015 Perthine 67-DB) as deposit for the Riva Persea #03.

The Attached addendum #1 (trade-in), addendum #2, exhibits A, B and C are part of this agreement.

BUYER:

Print: Cape Verde Perishing Day LLC Date: \_\_\_\_\_  
and/or assigns

BUYER:

Print: \_\_\_\_\_ Date: \_\_\_\_\_

FERRETTI GROUP OF AMERICA, LLC

By: [Signature] 2/17/16

Print: Tony Rodriguez

Title: VP / CFO (Must be corporate officer)

Receipt of Deposit Acknowledged:

Amount: \_\_\_\_\_ Date: \_\_\_\_\_

Signature \_\_\_\_\_

THIS AGREEMENT ISN'T BINDING UNTIL SIGNED BY BOTH PARTIES & DEPOSIT FUNDS HAVE BEEN RECEIVED & CLEARED INTO FGA'S ACCOUNT  
Ferretti Group of America, LLC, 1445 SE 16<sup>th</sup> Street, Ft. Lauderdale, FL 33316

# EXHIBIT A

## 76 PERSEO



### Technical Specifications

Model year	2017	Hull Color	TBD
Hull Identification Number	TBD	Max speed (kn)	32 (kn)
Stock Number	R76-TDD Preliminary	Cruise speed (kn)	37 (kn)
Length overall (LOA)	76 ft. 3 in	Range (nm)	325
Length of Hull (L)	74 ft. 5 in	Laden displacement	233,180 (lbs)
Waterline Length	64 ft. 2 in	Unladen displacement	215,302 (lbs)
Max beam (m)	18 ft. 10 in	Fuel	1479 US gal's
Draft	6 ft. 3 in	Water	222 US gal's
Engine	2 x MAN 12V	People on board	16
Engine HP	1800	Cabin / 1 Crew	16

Buyer

Seller

# EXHIBIT A

## 76 PERSEO

### Factory Options

Custom colour for hull/deck/sft and superstructure  
Navtop management with iPad  
Unique remote control: commando with rti/iPad license  
TV 48" usa in saloon  
TV 24" in vip cabin (us version)  
TV 50" usa in master cabin  
Blue underwater lights on the transom  
Blue underwater lights on the sides  
TV 24" usa in guest cabin st  
Upgraded marble  
Cryo stabilizer  
Parquet custom flooring for main deck  
Electric stern thruster 18 hp (double propeller)  
US SAT receiver in stbd guest cabin  
Upgraded port side sofa in salon  
Superstructure side handrails (both sides)  
Different lay out bathroom/wc area master  
Masters  
USB plugs inside  
Stainless steel protections for stair cleats  
Glendining 100s - 4 port (20mt)  
MAN 12V - 1800Hr  
Exposition Cost  
Control station on flybridge  
Additional helm station (bow and stern thruster installed)  
All cockpit awning with removable poles

MANUFACTURERS SUGGESTED RETAIL PRICE

\$

5,680,502.18

Buyer

Seller

**FERRETTI GROUP USA LIMITED WARRANTY (FOR RIVA YACHTS) EXHIBIT B**

**The Limited Warranty:** Ferretti Group USA ("FERRETTI") warrants, subject to the limitations and exclusions below, to the first retail purchaser ("First Owner") of this yacht ("Yacht") provided the First Owner completes, signs and returns the FERRETTI Warranty Registration Card to FERRETTI to the address below by certified mail, return receipt requested, within ten (10) days of the First Owner's purchase of the Yacht and to properly registered subsequent owners (the First Owner and any properly registered subsequent owner are hereafter the "Owner"), that it will repair or replace defects in (a) items manufactured by Ferretti SPA (the "Manufacturer") for one (1) year and (b) the Yacht's hull and fiberglass structural components for five (5) years. These warranties run from the earlier of the date the Yacht is manufactured or the Yacht is delivered to the First Owner. Unless prohibited by applicable state law, legal claims relating to any alleged problems with the Yacht will be barred unless suit is commenced within one (1) year from the date the cause of action accrues, regardless of the time remaining in the applicable warranty period. It is Owner's obligation to fully cooperate with FERRETTI to allow repair or replacement as provided above, and the failure to cooperate in good faith will void the warranty.

**FERRETTI's Obligation:** FERRETTI's obligation is exclusively limited to repairing or replacing (at its sole discretion) at a facility it designates. Any covered item is found to be defective. Such shall be Owner's SOLE and EXCLUSIVE REMEDY against FERRETTI or the Manufacturer for any claims of economic loss resulting from product defects or failure. Repaired or replaced items shall be warranted as provided herein for the remainder of the applicable warranty period. Parts or components that are replaced shall nevertheless become FERRETTI's property.

**Procedures:** Notice of defect occurring under this Limited Warranty must be given to FERRETTI (and to the dealer from whom the Yacht was purchased, if applicable) in writing within thirty (30) days after the date (a) of discovery of the defect or (b) it should reasonably have been discovered, at the address below, by certified mail, return receipt requested. Notices must include the Owner's name, address, phone number, the hull number, a description of the defect, the date it was discovered, the date of purchase, and the name and address of the party from whom the Yacht was purchased. A copy must also be sent to the dealer from whom the Yacht was purchased. The Owner must thereafter provide all information requested by FERRETTI regarding the alleged defect. The Owner must obtain FERRETTI's written approval before repairing the Yacht and must follow all applicable Manufacturer procedures. For items not covered by this Limited Warranty, the Owner must contact the component manufacturer. The provision of a survey to FERRETTI shall not constitute notice of defects or warranty claims hereunder unless the surveyor in such survey specifically indicates that a listed item constitutes in such surveyor's opinion a defect covered by this Limited Warranty.

**Future Improvements:** FERRETTI or the Manufacturer reserve the right to improve products in design or materials without any obligation to incorporate improvements into previously manufactured yachts. Riva yachts do not have a model year. Changes are incorporated in yachts by the Manufacturer at such are constructed from time to time. FERRETTI and Manufacturer do not warrant or represent that a particular yacht is of a particular model year.

**Entire Warranty, Modifications, Severability; Subsequent Owners:** This Limited Warranty is the complete and exclusive agreement between the parties concerning FERRETTI's warranty obligations and the Owner's warranty rights, superseding all prior or contemporaneous agreements, representations or warranties, oral or written, and all other communications between the parties relating to the subject matter hereof including, without limitation, FERRETTI's or the Manufacturer's marketing materials. No modification to or waiver under this Limited Warranty will be valid unless in writing and signed by an authorized FERRETTI officer. The invalidity or unenforceability of any one or more of the provisions herein shall not affect the validity and enforceability of the other provisions. Subsequent Owners to the First Owner may register to qualify for the benefits of this Limited Warranty by following the procedures specified after contacting FERRETTI at the address and phone set forth below.

**Choice of Forum and Law:** To the extent permitted by law, jurisdiction and venue shall be solely and exclusively in Miami-Dade County, Florida, and Florida law, excluding its principles of conflict of laws, will apply. The United Nations Convention on the International Sale of Goods shall not apply.

**Exclusions:** This Limited Warranty excludes and does not cover:  
 a. Damage to the Yacht caused by (i) any alteration, modification, or repair to the Yacht or any component, unless specifically authorized in writing by FERRETTI or (ii) failure to maintain the Yacht in accordance with applicable manuals, recommendations and generally accepted maintenance standards.

- b. Any yacht that has been salvaged or declared a total or constructive loss.
- c. Pains; varnishes; gel coats; and-fouling products; chrome plated, plated, aluminum, or other plated finishes, the color lacquers of materials or finishes, external wood paneling, teak, and laminating; stainless steel, fabrics and canvas (all of which are subject to the effects of different climates and use, including cracking, discoloration, and crazing); osmosis; blistering if the gel surface of the Yacht has been altered in any way including: repair, application of any coating other than marine and-fouling bottom paint, improper surface preparation for paint, or excessive sanding or sandblasting.
- d. Engines, engine parts, controls, accessories, air conditioning systems, bow thrusters, transmissions, electronics, batteries, appliances, propellers, generators, and any other equipment or components not manufactured by the Manufacturer, or the manufacturer thereof. Some components are warranted by their manufacturers per the warranties they supply. The Owner shall look exclusively to these manufacturers for all warranty claims regarding such components.
- e. Yachts which have been used for or subjected to rental, charter or other commercial service; collisions, accidents, improper or neglected operation, grounding, collision or other accidents, hurricanes or other extreme forces of nature, piracy or piratical operations; racing or towing; improper storage, transportation, service, maintenance or use; use in violation of instructions provided by the Manufacturer or any governmental laws, regulations or rules.
- f. Any published or announced speed, fuel consumption, weight, draft and performance characteristics, since these are estimated.
- g. Electrolysis, galvanic or crevice corrosion, or any deterioration of underwater items or repairs or replacement required as a result of lack of maintenance or improper use.
- h. Damage or failure resulting from increasing the horsepower of the original engines installed by Manufacturer.
- i. Any defect or repair requiring redesign of the Yacht or claims of non-compliance with the laws, regulations, rules, or recommended standards of any trade association, or governmental, or regulatory body or agency other than the governmental bodies or agencies of the United States.

**OTHER LIMITATIONS:** FERRETTI GIVES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ON THIS YACHT AND DISCLAIMS. (1) ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AS WELL AS ANY CONTRACTS OR REPRESENTATIONS BY ANY PARTY RESPECTING THIS YACHT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE TO THE EXTENT SUCH CANNOT BE DISCLAIMED, THEY ARE LIMITED TO THE DURATION OF THE APPLICABLE EXPRESS LIMITED WARRANTIES HEREIN. (2) ANY LIABILITY FOR ECONOMIC LOSS ARISING FROM CLAIMS OF DEFECTS, PRODUCT FAILURE, NEGLIGENCE, DEFECTIVE DESIGN, FAILURE TO WARN OR INSTRUCT, LACK OF SEAWORTHINESS, AND ANY OTHER THEORY OF LIABILITY, AND (3) ANY LIABILITY FOR: INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, COSTS OR EXPENSES, INCLUDING BUT NOT LIMITED TO: LOSS OF TIME, USE, VALUE OR INCONVENIENCE; RENTAL CHARGES, TRAVEL EXPENSES, CAPTAIN'S AND CREW MEMBERS' SALARIES, LOSS OF OR DAMAGE TO PERSONAL PROPERTY, DOCKAGE FEES, TOWING AND STORAGE CHARGES, AND THE COST OF TRANSPORTATION FOR REPAIR TO ANY REPAIR FACILITY; WHETHER INCURRED AS A RESULT OF ANY DEFECTS OR BECAUSE OF ANY STEPS THE OWNER TAKES TO BECOME ENTITLED TO REPAIR OR REPLACEMENT; INJURY TO OR DAMAGES TO PERSONS OR PROPERTY RESULTING FROM ANY INFORMATION PROVIDED BY THE DEALER IF ERRONEOUS OR NOT APPROVED IN ADVANCE IN WRITING BY FERRETTI OR MANUFACTURER, AND RESCISSION OR REVOCATION OF ACCEPTANCE. THE REMEDIES SET FORTH ABOVE ARE OWNER'S SOLE AND EXCLUSIVE REMEDIES AND ARE IN LIEU OF ALL OTHER REMEDIES, EXPRESS OR IMPLIED. SOME STATES DO NOT ALLOW: (1) THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES OR (2) TIME LIMITATIONS ON THE DURATION OF AN IMPLIED WARRANTY, SO THESE LIMITATIONS MAY NOT APPLY TO YOU. RETAIL CUSTOMERS IN THE EUROPEAN ECONOMIC AREA MAY HAVE LEGAL RIGHTS REGARDING THE SALE OF CONSUMER GOODS WHICH ARE NOT AFFECTED BY THIS LIMITED WARRANTY. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

FERRETTI GROUP USA  
 3445 SE 16th Street  
 Ft. Lauderdale, FL 33316  
 Tel.: (954) 750-6530

Model No \_\_\_\_\_  
 Hull No \_\_\_\_\_ Rev. 3-16

Buyer \_\_\_\_\_  


Seller \_\_\_\_\_  


# EXHIBIT C

**LIMITED WARRANTY  
FOR NEW COMMON RAIL MAN MARINE  
DIESEL ENGINES,  
POWERING MARINE PLEASURE CRAFT USED BY  
CONSUMERS IN NON-REVENUE PRODUCING  
APPLICATIONS THAT OPERATE LESS THAN 1000 HOURS  
PER YEAR  
STATUS 01/06**

**TERMS:**

**I. Limited Warranty**

MAN hereby warrants that any engine part of its Common Rail Series engines that is found, during the Warranty Period, to be materially defective, or of poor workmanship, will be repaired or replaced, at MAN's option, subject to the terms of this Limited Warranty.

**II. Warranty Period**

The Warranty Period of the Limited Warranty shall be a period of 24 months or 2000 hours, whichever occurs first, beginning on the first to occur:

- a. the date of delivery to the original retail purchaser, or
- b. for demonstrator vessels, one (1) year after date of commissioning or 150 operating hours

At the expiration of the Warranty Period, the Limited Warranty shall continue to apply for an additional 36 months as Extended Coverage, but only for the following major components of the engine:

- cylinder block (casting defect)
- crankshaft (forging defect)
- camshaft (forging defect)
- freshwater pump housing (casting defect)
- flywheel (casting defect)
- flywheel housing (casting defect)
- oil cooler housing (casting defect)
- front cover (casting defect)
- oil pan (casting defect)
- conrod pin (forging defect)

**III. Repairs**

MAN shall have a reasonable time to perform warranty repairs. Repairs will be performed during normal business hours. MAN will pay reasonable travel expenses for authorized service technicians to travel to the boat's location to make repairs, and will pay normal customary shipping charges to deliver parts. Costs for extraordinary travel expenses or transportation of parts are the responsibility of the owner.

**IV. Replacement Parts/Components/Engine**

All parts, components, or the entire engine, which are replaced under the terms of this Limited Warranty, assume the identity of the original part, component, or engine replaced, and will be entitled to Limited Warranty protection for the remainder of the original Warranty Period and/or Extended Coverage, if any.

Maintenance items such as lube oil, coolant, filters, etc. which are made unusable as a result of a warrantable defect will be replaced by MAN.

All defective parts, components or the entire engine, which are replaced under the terms of this Limited Warranty become the property of MAN.

**V. Limitations and Exclusions**

a) This Limited Warranty applies only to the following engine models delivered on or after January 1, 2006 and only if it is a new engine, installed and used in non-commercial non-revenue producing, marine pleasure craft applications in the U.S.A. or Canada and the Caribbean:

RS - 800	V12 - 1224
VS - 900	V12 - 1360
V10 - 1100	V12 - 1350

b) This Limited Warranty does not cover failures or damages that are a result of engine misuse, negligence, alteration or failure to carry out normal maintenance, or if repairs have been made by persons other than an Authorized MAN Service Representative.

c) This Limited Warranty does not cover the replacement of service parts such as injectors, filters, belts, oil and oil breze except as stipulated in paragraph IV. Replacement Parts/Components/Engine.

d) This Limited Warranty does not apply to equipment supplied with the engine that bears the name of another manufacturer (e.g. marine transmission, power take off, exhaust system, alternator, engine mounts).

e) MAN shall not be responsible for any loss of time, inconvenience, loss of use, meals, lodging, communication costs, transportation, cargo damage, overtime, towing, any dockage or harbor charges, or other consequential damages resulting from a defect covered by this Limited Warranty. MAN does not accept any liability for consequential, punitive, contingent, or incidental damages.

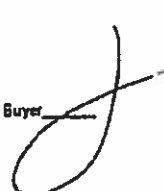
f) MAN shall not be responsible for labor and material costs relating to removal and replacement or dockage charges incurred in connection with warranty repairs.

g) MAN shall not be responsible for costs for the execution of regular maintenance service as specified in the maintenance manual for the engine, nor for repairs required as a result of the failure to use specified fuel, oil, lubricants and coolant.

h) THE LIMITED WARRANTY HEREIN SET FORTH IS THE SOLE AND EXCLUSIVE WARRANTY WITH RESPECT TO MAN COMMON RAIL MARINE DIESEL ENGINES. THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL SUCH OTHER WARRANTIES ARE HEREBY DISPLACED.

cht 0106

Buyer



Seller



## FERRETTI GROUP OF AMERICA, LLC

### TRADE-IN VESSEL ADDENDUM TO PURCHASE AND SALE AGREEMENT FOR NEW YACHT

Buyer's Name: Cape Verder Pershing Bay LLC and/or assigns	Trade Vessel Name: ALCHEMIST
Date: February 13, 2016	Trade Vessel Length: 62'
Trade Vessel Make: Pershing	<input type="checkbox"/> Doc or <input type="checkbox"/> Reg No.:                      Flag:
Trade Vessel Model Year: 2015	Trade Vessel Hull No : XFAP6208A515
Trade Allowance: \$2,750,000.00	Trade Vessel Engines: T-MTU 10V M93 1523 HP

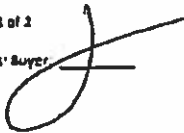
1. **Addendum.** This Addendum ("Addendum") to the Purchase and Sale Agreement ("Agreement") is made and entered into between Ferretti Group of America, LLC ("Ferretti") and Buyer as of the date written above. In the event of a conflict between this Addendum and the Agreement, the terms of this Addendum will control. This Addendum is part of the Agreement, and the Agreement is incorporated by reference herein. Capitalized words used herein refer to the corresponding terms in the Agreement unless otherwise defined herein.

2. **Trade Allowance.** Buyer will receive a credit in the amount of the Trade Allowance at Closing in exchange for delivery to Ferretti of good and marketable title to the Trade Vessel described above on the terms and conditions contained herein.

3. **Survey Option; Conditions of Survey.** Ferretti's obligation to accept the Trade Vessel is subject to Ferretti's satisfaction, in Ferretti's sole discretion, with a trial run and survey of the Trade Vessel. Buyer shall pay all running expenses for, and assume the risks associated with, the trial run, and Ferretti shall pay all costs of the survey. Buyer shall correct all survey deficiencies in a timely manner at Buyer's sole cost and expense, which will be a condition to Ferretti's obligations under the Agreement. If all survey deficiencies are not properly corrected by Buyer on or before Closing, Ferretti may, at its sole discretion, either reject the Trade Vessel or reasonably adjust the Trade Allowance based upon survey deficiencies not corrected by Buyer. If Ferretti elects to reject the Trade Vessel, the Agreement shall terminate, Ferretti shall return all deposit monies paid by Buyer, and both parties shall be released from further liability hereunder. Ferretti will not be responsible for the cost to correct any defects or deficiencies noted during the trial run and survey.

4. **Closing.** Buyer shall deliver the Trade Vessel to Ferretti's place of business ("Delivery Location") on or before Closing, together with all gear, machinery, equipment, fuel and other consumables (except any consumed during the trial run and any voyage to the Delivery Location), and all other articles and appurtenances on board the Trade Vessel as they existed on the Date of this Agreement, *except for* items described in the exclusion list (the "Exclusion List") attached to this Addendum. Buyer shall not modify the Trade Vessel, and shall not remove any component parts or systems without Ferretti's prior written consent. If Buyer should fail to deliver the Trade Vessel in the condition described above, Ferretti may either (i) adjust the Trade Allowance in the amount necessary, in Ferretti's sole but reasonable discretion, to return the Vessel to the condition as it should have been delivered to Ferretti by Buyer, or (ii) terminate the Agreement and return all deposit monies paid by Buyer, upon which both parties shall be released from further liability hereunder. On or before the Closing Date, Buyer shall deliver to Ferretti all documents necessary to transfer title to the Trade Vessel to Ferretti. Any funds Buyer owes for storage, insurance, repairs and/or other items in connection with the Trade Vessel must be paid by Buyer at or before Closing.

5. **Buyer's Representations; Requirements for Closing.** Upon execution of the Agreement, Buyer will not make any use of the Trade Vessel pending Closing except to move the Trade Vessel to the Delivery Location. Buyer represents and warrants that he will transfer to Ferretti good and marketable title to the Trade Vessel, free and clear of all debts, claims, maritime or common law liens, security interests, encumbrances, excise taxes, and any other applicable taxes, customs' duties, or tariffs due to any state, country, regulatory and/or taxing authority of any kind whatsoever (collectively, "Encumbrances"). At or before Closing, Buyer shall deliver to Ferretti (i) satisfactory evidence of title, (ii) proof of payment or removal of all Encumbrances, if any; (iii) if Buyer is a legal entity, a personal guaranty and indemnification from Buyer's beneficial owner(s) guaranteeing Buyer's representations and warranties in this Paragraph 5, and (iv) any other documents necessary for transfer of good and marketable title to Ferretti. Buyer shall indemnify and hold Ferretti harmless for any loss, liability, claim, damage, expense (including costs of investigation, defense, and reasonable attorney's fees and

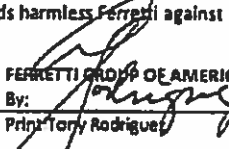



expenses) or diminution of value, whether or not involving a third party claim (collectively, "Damages"), arising from or in connection with any misrepresentation or negligent omission by the Buyer. Buyer shall pay any cost associated with, and shall cooperate fully to obtain, any authorization for sale required from any governing authority. Buyer irrevocably (x) assigns to Ferretti its interest in any duty-drawback arising from the export and resale of the Trade Vessel by Ferretti and (y) appoints Ferretti as its attorney in fact to submit documentation for Ferretti to obtain such duty-drawback. If Buyer is a legal entity, it will provide to Ferretti prior to Closing (a) proof that it is in good standing under the laws of the State or other jurisdiction under which the entity has been formed, (b) a consent action or resolution demonstrating the entity's duly authorized decision to trade-in the Trade Vessel, and (c) a power of attorney demonstrating the authority of the individual delivering the Trade Vessel and/or documents transferring the Trade Vessel to Ferretti

6. **Risk of Loss.** Buyer will bear the risk of loss of or damage to the Trade Vessel prior to delivery of the Trade Vessel to Ferretti. If the Trade Vessel is damaged subsequent to Buyer's execution of the Agreement, Ferretti may terminate the Agreement, return all deposit monies paid by Buyer, and both parties shall be released from further liability hereunder.

7. **Sales and Use Taxes.** Sales or use taxes, if applicable, payable on the Trade Vessel, are Buyer's responsibility, and Buyer shall pay the taxes due to Ferretti at Closing. Buyer hereby indemnifies and holds harmless Ferretti against and from any sales or use taxes for which Buyer is responsible.

BUYER:  
Print Cape Verde Pershing Bay LLC  
and/or assigns

FERRETTI GROUP OF AMERICA, LLC  
By:   
Print Tony Rodriguez  
Title: VP/CFO (Must be corporate officer)

2/17/16

BUYER:  
Print:

**EXCLUSIONS LIST:**

Ferretti Group of America, LLC, 1445 SE 16<sup>th</sup> Street, Ft. Lauderdale, FL 33316

Page 2 of 2  
Print Buyer 

Ferretti Group of America, LLC Trade-In Vessel Addendum

Rev. L.A. 1/15  
Ferretti 

## ADDENDUM 2

1. Addendum This Addendum 2 ("Addendum 2") to the Purchase and Sale Agreement as amended by Trade-in Addendum ("Agreement") is made and entered into between Ferretti Group of America, I.L.C ("Ferretti") and Buyer to be effective on the effective date of the Agreement. In the event of a conflict between this Addendum 2 and the Agreement, the terms of this Addendum 2 will control. This Addendum 2 is part of the Agreement, and the Agreement together with all of its Exhibits is incorporated by reference herein. Capitalized words used herein refer to the corresponding terms in the Agreement unless otherwise defined herein.

2. Exchange Allowance The above-described Exchange Vessel was purchased by Buyer from Ferretti on or about July 10, 2015. Ferretti acknowledges that Buyer had reported overheating problems with the starboard engine, which became apparent immediately after taking delivery of the Exchange Vessel and that Buyer sought warranty repair of the engine. Buyer has been unable to use the Exchange Vessel. Authorized engine repairman from Valley Diesel made 13 visits to the Exchange Vessel trying various repairs none of which solved the problem of the starboard engine overheating. Consequently, Buyer determined that the engine could not be repaired and tendered the Exchange Vessel back to Ferretti. In a show of good faith, Ferretti and Buyer agreed that Ferretti would accept the tender of the Exchange Vessel and allow the Buyer full credit of the Exchange Vessel's purchase price toward the purchase by Buyer of the new Yacht. Buyer agrees, represents and warrants, that he has good and marketable title to the Exchange Vessel described above and will deliver the Exchange Vessel to Ferretti on the terms and conditions contained herein.

3. Conditions of Tender, Survey Option Buyer will convey the Exchange Vessel to Ferretti free and clear of all liens and encumbrances and in good condition except for the defective starboard engine. Ferretti waives any survey of the Exchange Vessel on or before the Closing Date and except as otherwise stated herein, Buyer shall deliver to Ferretti all documents necessary to transfer title to the Exchange Vessel to Ferretti. Any funds Buyer owes for storage, insurance, repairs and other items in connection with the Exchange Vessel must be paid by Buyer at or before Closing.

4. No Admission of Liability Nothing contained in this Agreement, the documents being executed and delivered pursuant to this Agreement, nor any actions taken in furtherance of this Agreement, will constitute, be deemed or construed as an admission of liability, warranty obligations, wrongdoing, or of any position whatsoever in connection with any matters in dispute, litigation or otherwise. Liability, warranty or otherwise, or wrongdoing is expressly denied by Ferretti on behalf of itself, its affiliates, and its parent company. Buyer understands and acknowledges that the engines of the Exchange Vessel are excluded from the Ferretti Group USA Limited Warranty and neither Ferretti nor any of its affiliates or parent company is liable in any way for the performance of the Engines. The defects or problems affecting the starboard engine are expressly excluded from the Ferretti Group USA Limited Warranty and Buyer should look exclusively to the engine manufacturer for any warranty coverage concerning the engines. Notwithstanding the lack of warranty obligations, Ferretti has decided to accept the tender of the Exchange Vessel and allow the Buyer full credit of the Exchange Vessel's purchase price toward the purchase by Buyer of the new Yacht as a customer courtesy to Buyer. Buyer understands and acknowledges that this accommodation and customer courtesy does not signify in any manner any wrongdoing or warranty obligation on the part of Ferretti or any of its affiliates or parent company.

5. General Release and Discharge Buyer, and his present and former employees, agents, affiliates, and representatives, and insurers/underwriters (collectively, "Releasers") unconditionally and irrevocably, jointly and severally, each release, discharge and hold harmless Ferretti, Ferretti Group USA, Allied Marine, LLC Ferretti, SpA, and their respective present and former directors, officers, employees, agents, representatives, together with its past, present, and future parent companies, subsidiaries, divisions, related or affiliated entities (collectively, "Releasees") from all manner of action and actions, cause and causes of action, bad faith actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, breach of implied warranty, breach of express warranty, breach of warranty of workmanlike performance, negligence,

Buyer

Ferretti



## ADDENDUM 2

misrepresentation, negligent misrepresentation, claims for damage for hull and machinery, compensatory damages, consequential damages, bad faith damages, punitive damages, interest, attorneys' fees, costs, damages, and any sums or expenses whatsoever, known or unknown, in admiralty, law or equity which Releasors currently have or hereafter may have, known or unknown, against Releasees by reason of any claims relating to the Vessel and its engines, in addition to any warranty claims or other claims for any damages or defects to the Vessel that could be alleged against Releasees in this dispute.

Releasors understand and acknowledge that they are each releasing all past, present, and future rights and claims that each may have and/or had against Releasees relating to the Vessel and Releasors understand and acknowledge the significance and consequence of such specific intention to release all claims, and hereby assume full responsibility for any damages or losses relating to the Vessel or which could have been alleged in this dispute, regardless of whether such conditions, losses, expenses or damages have actually been suffered, experienced, or incurred by Releasors in the past or whether such may be suffered, experienced, or incurred in the future.

5. Confidentiality. Buyer agrees, represents, and warrants that he will not disclose, unless required to do so by valid order of a court of competent jurisdiction or required to do so in connection with a judicial proceeding in Buyer is compelled to testify, to anyone or any entity, the terms of this Agreement, the documents provided to the parties during settlement negotiations, or actual verbal or written settlement negotiations, except Buyer shall have the right to disclose this Addendum to the extent necessary and required by law to the appropriate state or federal governmental taxation authorities and to his tax and legal advisors. Buyer agrees that any breach of the confidentiality restrictions herein will entitle Ferretti to injunctive relief because no adequate remedy at law will be available to safeguard or compensate Ferretti from such a breach and the damages that would be suffered would be difficult to quantify or ascertain. Buyer agrees that, in response to any future unsolicited inquiry about the outcome of this dispute, Buyer and his respective attorneys shall respond that, "The issue has been resolved to the mutual satisfaction of the parties," without additional comment. The Parties understand and agree, however, that this response does not have to be verbatim and the use of words with the substantively same or similar meanings does not constitute a breach of this Agreement.

6. Closing. Buyer shall make the Exchange Vessel available to Ferretti at a safe port in California ("Delivery Location") on or before Closing, together with all gear, machinery, equipment, fuel and other consumables, and all other articles and appurtenances on board the Exchange Vessel as they existed on the July 10, 2015, except for items described in the exclusion list (the "Exclusion List") attached to this Addendum. Buyer has not modified the Exchange Vessel, and shall not remove any component parts or systems without Ferretti's prior written consent. On or before the Closing Date, Buyer shall deliver to Ferretti all documents necessary to transfer title to the Exchange Vessel to Ferretti.

7. Buyer's Representations: Requirements for Closing. Upon execution of the Agreement, Buyer will not make any use of the Exchange Vessel pending Closing except to move the Exchange Vessel to the Delivery Location. Buyer represents and warrants that: he will transfer to Ferretti good and marketable title to the Exchange Vessel, free and clear of all debts, claims, maritime or common law liens, security interests, encumbrances, excise taxes, and any other applicable taxes, customs' duties, or tariffs due to any state, country, regulatory and/or taxing authority of any kind whatsoever (collectively, "Encumbrances"), which obligation will be a condition precedent to Ferretti's obligation to accept the Exchange Vessel. At or before Closing, Buyer shall deliver to Ferretti (i) satisfactory evidence of title, (ii) proof of payment or removal of all Encumbrances, if any; (iii) if Buyer is a legal entity, a personal guaranty and indemnification from Buyer's beneficial owner(s) guaranteeing Buyer's representations and warranties in this Addendum, and (iv) any other documents necessary for transfer of good and marketable title to Ferretti. If Buyer is a legal entity, it will provide to Ferretti prior to Closing (a) proof that it is in good standing under the laws of the State or other jurisdiction under which the entity has been formed, (b) a consent action or resolution demonstrating the entity's duly authorized decision to trade-in the Exchange Vessel, and (c) a power of attorney demonstrating the authority of the individual delivering the Exchange Vessel and/or documents transferring the Exchange Vessel to Ferretti.

Buyer



Seller



## ADDENDUM 2

8. Risk of Loss Buyer will bear the risk of loss of or damage to the Exchange Vessel prior to delivery of the Exchange Vessel to Ferretti. If the Exchange Vessel is damaged subsequent to Buyer's execution of the Agreement, Ferretti may terminate the Agreement, return all deposit monies paid by:

BUYER:

Cape Verde Pershing Bay LLC and/or assigns

By: \_\_\_\_\_  
Sonny Astani, Sole Member

FERRETTI GROUP OF AMERICA, LLC

By: \_\_\_\_\_  
Name: Tony Rodriguez  
Title: VP / CFO

Buyer

Setor

**FORM 1.997. CIVIL COVER SHEET**

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

**I. CASE STYLE**

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

Case No.: \_\_\_\_\_  
Judge: \_\_\_\_\_

Cape Verde Pershing Bay, LLC  
Plaintiff  
vs.  
Ferretti Group of America, LLC  
Defendant

**II. TYPE OF CASE**

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence – other
  - Business governance
  - Business torts
  - Environmental/Toxic tort
  - Third party indemnification
  - Construction defect
  - Mass tort
  - Negligent security
  - Nursing home negligence
  - Premises liability – commercial
  - Premises liability – residential
- Products liability
- Real Property/Mortgage foreclosure
  - Commercial foreclosure \$0 - \$50,000
  - Commercial foreclosure \$50,001 - \$249,999
  - Commercial foreclosure \$250,000 or more
  - Homestead residential foreclosure \$0 – 50,000
  - Homestead residential foreclosure \$50,001 - \$249,999
  - Homestead residential foreclosure \$250,000 or more
  - Non-homestead residential foreclosure \$0 - \$50,000
  - Non-homestead residential foreclosure \$50,001 - \$249,999

- Non-homestead residential foreclosure \$250,00 or more
- Other real property actions \$0 - \$50,000
- Other real property actions \$50,001 - \$249,999
- Other real property actions \$250,000 or more
- Professional malpractice
  - Malpractice – business
  - Malpractice – medical
  - Malpractice – other professional
- Other
  - Antitrust/Trade Regulation
  - Business Transaction
  - Circuit Civil - Not Applicable
  - Constitutional challenge-statute or ordinance
  - Constitutional challenge-proposed amendment
  - Corporate Trusts
  - Discrimination-employment or other
  - Insurance claims
  - Intellectual property
  - Libel/Slander
  - Shareholder derivative action
  - Securities litigation
  - Trade secrets
  - Trust litigation

**COMPLEX BUSINESS COURT**

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes  No

- III. REMEDIES SOUGHT** (check all that apply):
- Monetary;
  - Non-monetary declaratory or injunctive relief;
  - Punitive

- IV. NUMBER OF CAUSES OF ACTION:** ( )  
(Specify)

1 - Breach of Contract

- V. IS THIS CASE A CLASS ACTION LAWSUIT?**
- Yes
  - No

- VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?**
- No
  - Yes – If “yes” list all related cases by name, case number and court:

- VII. IS JURY TRIAL DEMANDED IN COMPLAINT?**
- Yes
  - No

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I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature s/ Gregory Gillis Olsen FL Bar No.: 247251  
Attorney or party

(Bar number, if attorney)

Gregory Gillis Olsen 08/01/2017  
(Type or print name)

Date