

**SETTLEMENT AGREEMENT
BETWEEN
THE GOVERNMENT OF THE VIRGIN ISLANDS
DEPARTMENT OF PLANNING AND NATURAL RESOURCES
AND
GREAT ST. JIM, LLC**

THIS SETTLEMENT AGREEMENT is entered into by the **VIRGIN ISLANDS DEPARTMENT OF PLANNING AND NATURAL RESOURCES** ("Complainant" or "DPNR") and **GREAT ST. JIM, LLC** ("Respondent").

WITNESSETH:

WHEREAS, the Complainant is responsible for the administration and enforcement of laws and regulations pertaining to the protection and preservation of the coastal resources of the United States Virgin Islands, including the Coastal Zone Management Act (the "CZM Act"), Title 12, Chapter 21, of the Virgin Islands Code, and the Division of Coastal Zone Management ("CZM") is a division thereof;

WHEREAS, the Respondent, Great St. Jim, LLC, a Virgin Islands limited liability company, (hereinafter "the Respondent"), is a person as that term is defined in Section 902 of the CZM Act.

WHEREAS, Respondent is the owner of property described as Parcels Nos. A Rem, A-1, A-2, B-1 Rem, B-1-1, B-1-2, B-2 Rem, B-2-1, B-2-2, C-1 Rem, C-1-1, C-1-2, C-2 Rem, C-2-1, C-2-2 Great St. James Island, St. Thomas, Virgin Islands (hereinafter "the Property").

WHEREAS, the Property is located within the first tier of the Coastal Zone.

WHEREAS, in response to public complaints of development on Great St. James Cay, a search of CZM records was performed and that revealed no permits or authorization letters for

development or maintenance were issued for the Property other than a permit for the existing dock on Shallow Bay which is in the process of being assigned to Respondent.

WHEREAS, on or about April 18, 2016, Special Projects Coordinator David Rosa visited the Property to conduct an inspection.

WHEREAS, upon arrival and initial inspection Coordinator Rosa observed development activity in various areas at the Property. Immediately, Coordinator Rosa met with an employee of the beneficial owner, known as "Anna", and served upon her Cease & Desist Order No. C&D-01-STT dated April 18, 2016 and issued a verbal order to cease all development activity on the island.

WHEREAS, upon further inspection of the Property, Coordinator Rosa observed what he believed were newly cut road paths, extensive bare soil with no vegetation growing from the exposed earth, four large circular areas cleared at different ends of the island, un-weathered track hoe marks, and an excavation site (Please see NOVA Exhibit Photos).

WHEREAS, Complainant has asserted that the activities listed above constituted violations of the Coastal Zone Management Act.

WHEREAS, accordingly, on April 22, 2016, NOVA-04-16-STT was issued and served April 25, 2016 on Respondent's representative Erika Kellerhals.

WHEREAS, on or about April 25, 2016, an informal conference was held between the parties and Respondent was informed of the allegations associated with NOVA-04-16-STT. At said meeting, negotiations ensued and the parties agreed to reconvene upon further investigation.

WHEREAS, Respondent has disputed Complainant's determinations as set forth by DPNR in the NOVA.

WHEREAS, on or about June 10, 2015, the parties attended a telephone conference. At said telephone conference, negotiations ensued and the parties reached an Agreement to resolve this matter (the "Agreement");

WHEREAS, the parties recognize that this Agreement has been negotiated in good faith and that it is fair, reasonable and in the public interest; and

WHEREAS, the Parties agree that none of the foregoing recitals shall be deemed an admission by Respondent;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Parties Bound

Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to legally bind the party he or she represents.

2. Monetary Penalty

Respondent shall pay a stipulated penalty in the amount of **SEVENTY THOUSAND DOLLARS AND ZERO CENTS (\$70,000.00)** payable upon execution of this Agreement.

3. Corrective Action

- (a) In addition to the monetary penalty agreed to in paragraph 2, the Respondent shall immediately Cease and Desist from any further development at the Property which, pursuant to Title 12 of the Virgin Islands Code and Title 12 of the Virgin Islands

Rules and Regulations, would require the approval of DPNR, without first obtaining approval from DPNR to be granted through a CZM Permit. Additionally, Respondent shall immediately Cease and Desist from any further development allowable through 12 VIC § 910(b) without first obtaining a Letter of Authorization from DPNR pursuant to Title 12 of the Virgin Islands Code and Title 12 of the Virgin Islands Rules and Regulations. All CZM Permit applications or Letters of Request for Authorization shall be processed in accordance with applicable law.

- (b) Respondent shall submit to CZM a permit application for all work it currently would like to perform at the property that statutorily requires a permit or letter of authorization, such application to include a detailed proposed work plan, to include any work proposed in Respondents letter of request for authorization dated May 10, 2016 which Respondent would like or still intends to complete.
- (c) Respondent and CZM shall conduct a "walk-through" of the Property to inspect the proposed work plan for the permit application.
- (d) Failure to comply with this Order of Corrective Action, after written notice to Respondent of the alleged failure to comply and the expiration of a cure period without Respondent effectuating a cure, constitutes an additional violation, will subject the Respondent to further enforcement action, the penalty amount of this Settlement Agreement to revert back to the original fine amount of \$280,000.00 from the Notice of Violation Assessment NOVA-04-16-STT.

4. Compliance with Applicable Laws

This Agreement in no way relieves Respondent of its responsibility to comply with any other applicable federal or territorial laws, regulations and permits not specifically mentioned herein, and compliance with this Agreement shall not constitute a defense to any action pursuant to said laws, regulations, or permits raised by any territorial or federal agency other than DPNR.

5. Release

Upon compliance with all terms and conditions of this Agreement, DPNR fully and unconditionally releases and discharges Respondent and its successors, assigns, members, managers, employees, affiliates, subsidiaries, agents, representatives and attorneys (hereinafter "Respondent Parties"), except as specifically provided in Paragraph 7 of this Agreement, from any and all claims, demands, liens, causes of action, suits, damages, judgments, debts or liabilities whatsoever, both at law or in equity, which DPNR and any of its successors or assigns may have now against Respondent relating to any alleged violation indicated herein or in the Notice of Violation Assessment NOVA-04-16-STT.

6. Covenant Not to Sue

In consideration of the actions that will be performed by Respondent under the terms of this Agreement, and except as specifically provided in Paragraph 7 of this Agreement, DPNR covenants not to sue or to take further administrative action against Respondent for alleged violations of the Act, relating to any alleged violation indicated herein or in the Notice of Violation Assessment NOVA-04-16-STT, now known. These covenants not to sue are

conditioned upon satisfactory performance by Respondent of its obligations under this Agreement.

7. Reservations of Rights by DPNR-CZM

DPNR reserves and this Agreement is without prejudice to, all rights against Respondent with respect to all matters not expressly included within the Covenants Not To Sue in Paragraph (6). Notwithstanding any other provisions of this Agreement, DPNR reserves, and this Agreement is without prejudice to, all rights against Respondent with respect to:

- (a) Liability for failure of Respondent to meet a requirement of this agreement; and
- (b) Liability for costs incurred or to be incurred by the United States Virgin Islands not specifically covered by this agreement or unbeknownst to the Complainant;
- (c) Liability for future violations (occurring after the Commissioner's approval of this Agreement.)
- (d) Liability for damages for injury to, destruction of, or loss of natural resources, and for costs of any natural resource damage assessments not specifically covered by this agreement or unbeknownst to the Complainant.

Nothing in this Agreement is intended to be or shall be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Government of the Virgin Islands may have against any person, firm, corporation or other entity not a signatory to this Agreement, other than Respondent Parties. This Settlement Agreement does not limit or affect the rights of Respondent or the Government of the Virgin Islands against any third parties not named herein,

nor the rights of third parties not parties to this Agreement against any other parties, other than Respondent Parties.

8. Indemnification

Respondent agrees to indemnify, defend, and hold harmless DPNR from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including any attorney's fees) and causes of action of whatsoever character which DPNR may incur, sustain or be subjected to, arising out of or in any way connected to the actions taken by Respondent at the Property up to the time of execution of the Settlement Agreement, that resulted in this Settlement Agreement, the actions to be performed by Respondent at the Property under this Agreement, and arising from any cause, except the sole negligence of DPNR.

9. No Admission.

Neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by Respondent of any liability, unlawful conduct of any kind or violation by Respondent of any law.

10. Modification

This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes any and all prior agreements, representations and understanding, whether written or oral, relating to the subject matter hereof. Prior drafts of this Agreement shall not be used in any action involving the interpretation or enforcement of this Agreement. All modifications to this Agreement shall be in writing and signed by the parties hereto.

11. Jurisdiction

This Agreement shall be construed and its performance enforced under the laws of the United States Virgin Islands.

12. Representations

Each person executing this Agreement represents that the party hereto on whose behalf the person is executing this Agreement has duly authorized the execution of this Agreement and that such person is authorized to execute this Agreement on behalf of such party.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement as of the day and year written below.

GREAT ST. JIM, LLC
By: ~~Poplar, Inc., Sole Member~~

By: Taffrey Epstein
Its: President

7-22-16
Date

GOVERNMENT OF THE VIRGIN ISLANDS
DEPARTMENT OF PLANNING AND NATURAL RESOURCES

J. P. Griol
JEAN-PIERRE L. GRIOL, DIRECTOR
DIVISION OF COASTAL ZONE MANAGEMENT

01 Aug 2016
Date

Dawn L. Henry
DAWN L. HENRY, ESQ., COMMISSIONER
DEPARTMENT OF PLANNING AND NATURAL RESOURCES

August 4, 2016
Date

