

## SETTLEMENT AGREEMENT

### **BETWEEN THE GOVERNMENT OF THE VIRGIN ISLANDS DEPARTMENT OF PLANNING AND NATURAL RESOURCES AND NAUTILUS, INC.**

WHEREAS, the Complainant, the Department of Planning and Natural Resources (DPNR), 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 (hereinafter “the CZM Act”), Title 12, Chapter 21, of the Virgin Islands Code;

WHEREAS the Division of Coastal Zone Management (CZM) is a division of DPNR;

WHEREAS, Respondent, Nautilus, Inc. (hereinafter “Respondent”) is a duly registered limited liability company conducting business in the United States Virgin Islands.

WHEREAS, Respondent is a person as that term is defined in Section 902 of the Coastal Zone Management (CZM) Act.

WHEREAS, Respondent is the owner of property described as Little St. James Cay, on St. Thomas, Virgin Islands (hereinafter “the Property”).

WHEREAS, Little St. James Cay is located within the first tier of the Coastal Zone.

WHEREAS, on or about December 8, 2011 personnel from the divisions of Coastal Zone Management and Fish and Wildlife conducted a site visit at Little St. James Cay.

WHEREAS, upon inspection personnel found excavation at the shoreline and that near shore soil disposal at the cay had occurred.

WHEREAS, further inspection revealed track hoe operations at the northern point of Little St. James, Cay.

WHEREAS, the work conducted at Little St. James Cay listed herein constitutes a violation of the Coastal Zone Management Act;

WHEREAS, NOVA-01-12-STT was issued by DPNR/CZM on February 24, 2012, and served on Maria T. Hodge, attorney-in-fact for Nautilus, Inc., on March 8, 2012;

WHEREAS, attorney Hodge submitted on April 4, 2012, a Request for Hearing and Answer to request an informal conference to comment on the allegations of NOVA-01-12-STT and promote early resolution.

WHEREAS, a meeting was held on April 24, 2012 with Director, Jean-Pierre L. Oriol, Legal Counsel Winston Brathwaite, and Special Projects Coordinator, Alex Holecek and negotiations ensued;

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

NOW, THEREFORE, DPNR and NAUTILUS, INC. agree as follows:

**1. Parties Bound**

This Agreement shall be binding upon each of the parties and their successors and assigns. 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. Civil Penalty Assessment**

Respondents shall pay a stipulated penalty in the amount of FIFTY THOUSAND and 00/100 DOLLARS (\$50,000.00). Additionally all corrective actions below must be taken:

**3. Corrective Actions**

- a. Respondent must submit a plan for the removal of the illegally filled area identified in NOVA-01-12-STT to CZM. The plan must

include the methods of removal, at the end location for the material being removed, the erosion and sediment control measures to be installed, and the expected length of time for the removal process.

- b. Respondent shall apply for all territorial and federal permits necessary to perform the removal of the filled area.
- c. If it is determined that the fill in the area is best left in place, Respondent shall fund a coral restoration project in an amount not less than the cost of the removal of the filled area.

**4. Non-Compliance with other 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.

**5. Release**

Upon compliance with all terms and conditions of this agreement, Respondent, its members, officers, employees and agents shall be released from civil and criminal liability for the specific violations of the Act mentioned in NOVA-01-12-STT.

**6. Covenant Not to Sue**

In consideration of the actions that will be performed by Respondents 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 administrative action or seek criminal penalties against Respondents, their members, officers, employees or agents for violations of the Act, relating to

any violation alluded to herein. These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of their 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 all rights against Respondent 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.
- b. Liability for future violations (occurring after the date of the violations listed in NOVA-01-12-STT referenced herein) and,
- c. Liability for damages or injury to, destruction, or loss of natural resources, and for costs of any natural resource damage assessments.

Nothing in this Agreement is intended to be nor shall it 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. This Settlement Agreement does not limit or affect the rights of Respondents 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.

**8. Modification**

This Agreement contains the entire agreement of the parties and shall not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of the Agreement shall not be used in any action involving the interpretation or enforcement of the Agreement. All modifications to this Agreement shall be in writing and signed by the Parties.

**9. Jurisdiction**

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

**10. Representations**

Each person executing this Agreement represents that the party 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 the Agreement on his or her behalf.

IN WITNESS WHEREOF, the parties hereto are authorized and have executed this Agreement on the day and year below.

**NAUTILUS, INC.**

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Its:

May \_\_\_\_\_, 2012

**DEPARTMENT OF PLANNING AND NATURAL RESOURCES**

\_\_\_\_\_  
JEAN-PIERRE L. ORIOL, DIRECTOR  
DIVISION OF COASTAL ZONE MANAGEMENT

May \_\_\_\_\_, 2012

May \_\_\_\_\_, 2012

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ALICIA BARNES, COMMISSIONER  
DEPARTMENT OF PLANNING AND NATURAL RESOURCES