

**GOVERNMENT OF THE VIRGIN ISLANDS
BEFORE THE DEPARTMENT OF PLANNING AND NATURAL RESOURCES
DIVISION OF COASTAL ZONE MANAGEMENT**

IN THE MATTER OF)	NOVA 04-16-STT
THE DEPARTMENT OF PLANNING AND)	
NATURAL RESOURCES, COMMISSIONER)	
DAWN L. HENRY, ESQUIRE,)	
)	
COMPLAINANT,)	NOTICE OF FAILURE TO CURE
)	BREACH OF SETTLEMENT
vs.)	AGREEMENT AND
)	ENFORCEMENT OF SETTLEMENT
GREAT ST. JIM, LLC)	AGREEMENT
)	
)	
)	
RESPONDENT.)	
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SUPPLEMENTAL CONSENT AGREEMENT

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 (the “CZM Act”), Title 12, Chapter 21, of the Virgin Islands Code, and the Division of Coastal Zone Management (“CZM”) is a division thereof; and

WHEREAS, the Complainant, commenced an administrative enforcement proceeding by serving Respondent on April 25, 2016 with Notice of Violation No. NOVA-04-16-STT dated April 22, 2016 (“NOVA”); and

WHEREAS, on or about August 4, 2016, respondent entered into a Settlement Agreement (“Settlement Agreement”) with DPNR regarding issues pertaining to the NOVA; and

WHEREAS, on or about November 4, 2016, Complainant served Respondent with a Notice to Cure Breach of Settlement Agreement (“Notice”) requiring Respondent within ten (10) days to remove all unpermitted development and structures and failure to comply will subject Respondent to further enforcement action pursuant to V.I. Code Ann. Tit. 12 § 913 and Section 3(d) of the Settlement Agreement; and

WHEREAS, on or about December 15, 2016, Complainant served Respondent with a Notice of Failure to Cure Breach of Settlement Agreement and Enforcement of Paragraph 3(d) of the Settlement Agreement “Failure to Cure”) requiring Respondent to pay DPNR the remaining penalty balance of Two Hundred Ten Thousand Dollars (\$210,000,00); and

WHEREAS, Complainant and Respondent are collectively referred to herein as the Parties; and

WHEREAS, the Parties agree that: (a) settlement of the matters set forth in the NOVA, Settlement Agreement, Notice and Failure to Cure are in the best interest of the Parties and the public; (b) entry of this Supplemental Consent Agreement without litigation is the most appropriate means of resolving this matter; and (c) by entering into this Supplemental Consent Agreement, Respondent neither agree with nor admit to any of the foregoing recitals but agrees that this Supplemental Consent Agreement shall be enforceable in the event Respondent fails to comply with the provisions contained herein; and

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

NOW THEREFORE, the Parties agree as follows:

The Respondent agrees to fund the following Supplemental Environmental Project (“SEP”) in Lieu of Stipulated Penalties of not less than One Hundred Sixty Thousand Dollars (\$160,000.00): Construction of the Raveling Wall at Fort Christian located on St. Thomas in Tier 1.

1. Escrow Requirements:

- A. Within five business (5) days of receipt of this fully executed Supplemental Consent Agreement, Respondent shall establish an escrow account and pay into the account not less than One Hundred Sixty Thousand Dollars (\$160,000.00). The purpose of the escrow account is solely for the benefit of the SEP.
- B. The escrow account must be an interest bearing account and its terms, to include disbursements must be approved by DPNR. The account must be at a banking institution located on St. Thomas USVI.
- C. Any interest earned must go towards the SEP.
- D. Respondent shall not be a signatory on the escrow account.
- E. Respondent shall be responsible for all cost associated with opening and maintaining of the escrow account. The escrow account should be for a period of no more than two years or until funds are expended.

F. Respondent shall select a bonded 3rd party to act as the agent for the escrow account.

The agent's primary responsibility is to disburse funds from the escrow account based on DPNR's written approval.

2. SEP Management

G. Due to the historical and preservation nature of the project, DPNR-State Historic Preservation Office will oversee the implementation of the SEP, to include but not limited to design of the Raveling wall, selection of contractor(s), management, approval of work and payment requests.

3. 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.

4. 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, Settlement Agreement, Notice, and Failure to Cure.

5. 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 6 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, Settlement Agreement, Notice, and Failure to Cure now known. These covenants not to sue are conditioned upon satisfactory performance by Respondent of its obligations under this Agreement.

6. 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 (5). 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 Supplemental 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.

7. 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.

8. 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.

9. Jurisdiction

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

10. 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.

JEAN-PIERRE L. ORIOL
Director – Coastal Zone Management
8100 Lindberg Bay, Suite #61
Cyril E. King Airport
Terminal Building, 2nd Floor
St. Thomas, USVI 00802

JEFFERY EPSTEIN
GREAT ST. JIM, LLC
Popular, Inc., Sole Member, President

SO ORDERED THIS ____ DAY OF _____ 2017

**HONORABLE DAWN L. HENRY, COMMISSIONER
DEPARTMENT OF PLANNING AND NATURAL RESOURCES**