

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

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

**WHEREAS**, promptly upon receipt of both the Notice and the Failure to Cure, Respondent has been in frequent communication with Complainant in order to clarify and resolve ambiguities therein and to timely respond with appropriate action to address Complainant’s concerns; and

**WHEREAS**, Respondent has taken action to appropriately and comprehensively address all of Complainant’s concerns as set forth in the Notice and the Failure to Cure, and moving forward has demonstrated a genuine and substantial commitment to work proactively with Complainant to preserve and protect the coastal resources in the United States Virgin Islands and to be a responsible steward of those resources on Great St. James Island; and

**WHEREAS**, the commitment of Respondent and its affiliates to the preservation and protection of the Coastal Resources of the United States Virgin Islands is evidenced, among other ways, by a grant to the St. Thomas Historical Trust, an exempt entity under Section

501(c)(3) of the Internal Revenue Code (the “Historic Trust”), which Gratitude America, Ltd., an affiliate of Respondent, is making in the amount of One Hundred Sixty Thousand Dollars (\$160,000) for the purpose of paying fees, costs and expenses in connection with the construction of a raveling wall at Fort Christian located in Tier 1 on St. Thomas in the United States Virgin Islands (the “Fort Christian Project”);

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

**WHEREAS**, the Parties agree that: (a) resolution of the matters set forth in the NOVA, the Settlement Agreement, the Notice and the Failure to Cure are in the best interests of the Parties and the public; (b) the clarity and finality provided through the entry of this Supplemental Consent Agreement without litigation is the most appropriate means of resolving this matter; and (c) this Supplemental Consent Agreement shall be enforceable in the event of any failure by the Parties 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:

**1. Further Action Discontinued**

In view of Respondent’s efforts to clarify, eliminate and/or comprehensively address all of Complainant’s issues set forth in the Notice and the Failure to Cure, and Respondent’s demonstrated commitment moving forward to work proactively with the Complainant to preserve and protect the coastal resources of the United States Virgin Islands, including

those on Great St. James Island, the Parties agree that further action against Complainant under the Notice and Failure to Cure, including, without limitation, the assessment of any penalty against Respondent contemplated by the Notice or the Failure to Cure with respect to the matters contemplated by the Notice and Failure to Cure, shall be permanently discontinued.

## **2. 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.

## **3. Release**

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 5 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 any of DPNR, the Commissioner of DPNR and any of the successors or assigns thereof ever had or now has against any of the Respondent Parties arising out of, relating to or connected with any violation or alleged violation of any agreement or understanding with

DPNR or the Commissioner of DPNR, or any violation or alleged violation of any permit or approval issued by, or of any Federal or Virgin Islands law or regulation within the enforcement jurisdiction of, DPNR or the Commissioner of DPNR, based upon any matter, facts or circumstances from the beginning of time through the date of this Agreement, including, without limitation any violation or alleged violation indicated herein or in the Notice of Violation Assessment NOVA-04-16-STT, the Settlement Agreement, the Notice, and the Failure to Cure.

#### **4. Covenant Not to Sue**

In consideration of the actions heretofore performed by Respondent in response to the Notice and the Failure to Cure, and except as specifically provided in Paragraph 5 of this Agreement, DPNR and the Commissioner of DPNR each covenants not to sue or to take further administrative action against the Respondent Parties in respect of any matters contemplated by the release provided in Paragraph 3 hereof, including without limitation, in respect of any violation indicated herein or contemplated in the Notice of Violation Assessment NOVA-04-16-STT, the Settlement Agreement, the Notice, and the Failure to Cure, whether existing now or at any time prior to the date hereof.

#### **5. 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 4. 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 contemplated by this Agreement;
- (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 contemplated by this Agreement.

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 Consent 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.

## **6. No Admission**

Neither this Agreement, nor anything provided herein or on the recitals hereof, nor any actions taken by Respondent in response to the Notice or the Failure to Cure, 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 of any law by Respondent.

## **7. 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.

## **8. Jurisdiction**

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

## **9. 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.

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

\_\_\_\_\_  
JEFFREY EPSTEIN, President of  
Poplar, Inc., the Sole Member of  
GREAT ST. JIM, LLC

**SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2017**

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