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December 9, 2020

By Hand Delivery and Via email

Honorable Members of the 33rd Legislature
Senator Alicia V. Barnes
Senator Oakland Benta
Senator Marvin A. Blyden
Senator Allison L. DeGazon
Senator Dwayne M. DeGraff
Senator Novell E. Francis, Jr.
Senator Donna Frett-Gregory
Senator Kenneth L Gittens
Senator Stedmann Hodge, Jr.
Senator Myron D. Jackson
Senator Javan E. James, Sr.
Senator Steven D. Payne, Sr.
Senator Janelle K. Sarauw
Senator Athneil "Bobby" Thomas
Senator Kurt A. Vialet

Re: Statement on Behalf of Eglah Marsh Clendinen and Minerva Marsh Vazquez Regarding CZM Permit Application by Summer's End Group ("SEG")

Dear Senators:

We submit this statement on behalf of our clients, Eglah Marsh Clendinen, through her attorneys in fact, Jacqueline Clendinen and Ernie Clendinen, and Minerva Marsh Vazquez, through her attorney in fact Gary Lopez.

Eglah Marsh Clendinen is the record title owner of Parcel 10-17 Estate Carolina. Minerva Marsh Vazquez is the record title owner of Parcel 10-18 Estate Carolina. They are also sisters. Our clients are in their eighties, and of limited means. They are deeply frustrated. Their most valuable assets: Parcels 10-17 and 10-18 Estate Carolina, should be providing income for their care and comfort. Instead, their property has been under the control of Summer's End Group

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("SEG") and its predecessors for a decade, while they have received only a few nominal payments. They are out of time and patience.

For reasons explained below, there is no valid agreement between our clients and SEG pursuant to which SEG is authorized to use Parcels 10-17 and 10-18 for the development that is currently pending before you. Therefore, while our clients do not have any specific objections to the merits of SEG's development plans, we must advise you that our clients have no current agreement with SEG for the use of Parcels 10-17 and 10-18 as part of that development. Despite extensive efforts at good faith negotiations, which have been ongoing with SEG since November 2019, SEG has refused to resolve our concerns in a way that provides a fair and equitable return in exchange for the use of these properties, or that compensates our clients for over ten (10) years of broken promises. Our clients have been unable to rent, sell or realize any reasonable income from Parcels 10-17 and 10-18 Estate Carolina. It ends now.

Eglah and Minerva Marsh came to us for independent advice and counsel after many years of delay, confusion and broken premises from SEG and its predecessors. We have carefully reviewed all of the various leases, agreements, and other documents relating to the use and control of Parcels 10-17 and 10-18 Estate Carolina, and we have the results of title searches of both properties. We have informed SEG of the significant defects in SEG's alleged right to use and control these properties.

SEG claims a right to use Parcels 10-17 and 10-18 based upon a series of agreements, all of which depend upon a Lease purportedly entered into by an entity known as The Marsh Sisters Family Trust. The Trust and the original Lease were both created in 2004 by Brion Morrisette, Esq. At that time, Attorney Morrisette was purportedly acting as the "family attorney" for Eglah and Minerva Marsh, while simultaneously pursuing his own agenda as an interested party.

To have a legal right to use Parcels 10-17 and 10-18 Estate Carolina in the development, SEG must be able to show that there is a valid Trust and that the Trust executed a valid lease, which was duly assigned to SEG. This is a burden that SEG cannot meet.

The Defects In The Marsh Sisters Trust

In our opinion, the Marsh Sisters Trust is either void or voidable, due to defects in execution and because it was never funded.

The Trust was prepared by Attorney Brion Morrisette and purportedly executed on November 1, 2004. The only assets identified as the Trust *res* are Parcels 10-17 and 10-18 Estate Carolina. While there is no requirement for a Trust document to be witnessed and notarized; it is the better practice and this document in fact provides for 2 witnesses and a notary to verify the signatures of the grantors/trustees. The signatures of *both* Eglah and Minerva Marsh were attested by a notary in Kings County New York. Because a notary can only attest to a signature

written in his presence, the notary on the Trust can only be valid if both women were physically located with the notary, in New York, on November 1, 2004.

It is elemental under well-established Virgin Islands law that a Trust is not valid unless and until it is funded. Without an ascertainable trust *res*, there is no Trust. *See, e.g., King v. Appleton,* 61 V.I. 339 (V.I. 2014) (The elements of a valid trust include a competent settlor and trustee, intent by the settlor to create a trust, an ascertainable trust res, a sufficiently ascertainable beneficiary or beneficiaries, a legal purpose, and a legal term. *Id.*, at 61 V.I. 351). This means the Trust cannot be valid unless Parcels 10-17 and 10-18 were conveyed by Eglah and Minerva Marsh to the Trust by deeds executed in accordance with Virgin Islands law.

The title searches of these parcels confirm that no deeds were ever recorded conveying Parcels 10-17 and 10-18 Estate Carolina from Eglah and Minvera Marsh to the Marsh Sisters Family Trust. We have only seen copies of quit claim deeds; the location of the originals is unknown to us. SEG contends that the existence of the copies constitutes proof that quit claim deeds were executed. SEG further contends that this is sufficient to establish and fund the Trust under Virgin Islands law. We disagree, not only because a deed must be properly witnessed, notarized, and then delivered to and accepted by the grantee to be effective, but because of the other defects in the signatures and notaries on the Trust and the copies of the deeds.

There is no dispute that deeds for Parcels 10-17 and 10-18 from Eglah and Minerva Marsh to the Trust were never attested or recorded. The current location of the original unattested, unrecorded deeds is unknown to us. The original deeds are not in the possession of our clients. However, based upon the notary signatures on the copies of the deeds, which were purportedly executed on the same day as the Trust, Eglah Marsh was physically located in St. John and Minerva Marsh was physically located in New York. Eglah Marsh's signature on the **deed** for Parcel 10-17 is both witnessed and notarized by Brion Morrisette, in St. John. Minerva Marsh's signature on the **deed** for Parcel 10-18 was notarized in New York, by the same notary who notarized the signatures **of both women on the Trust**. Clearly, Eglah Marsh could not have been physically located in both St. John and New York on November 1, 2004, which calls into question her signature on both the deed and the Trust. Moreover, the Parcel 10-17 deed would not be attested under current standards, which require two witnesses **and** a notary; the cadastral division no longer attests deeds that are witnessed and notarized by the same person.

Defects in the Lease That Was Assigned to SEG

In addition to the lack of a landlord with legal existence or capacity, the Lease upon which SEG relies is also void or voidable, because there was no meeting of the minds on its terms, and because the tenant was in default when the Lease was purportedly assigned to SEG.

There is a Lease dated November 1, 2004, which was created by Attorney Morrisette at the same time as he created the Trust. The **2004 Lease** identifies the tenant as Coral Bay Marina

LLC (CBM), **an entity controlled by Attorney Morrisette**. The 2004 Lease has unnumbered pages, but the key terms are contained in **"Exhibit Two"** which states that the rent for year one is $40,000, with $20,000 already paid and $20,000 due on execution. The rent for year two is also $40,000, and the rent for year three is $77,000. Starting at year four, there are annual rent increases based upon the greater of the CPI or 5%. Annual rent for first 20-year Option period begins with the rate in effect for the preceding year (year 10) and increases annually at the greater of CPI or 5%. Rent for the Second 20-year Option was to be based upon the agreement of the parties or an appraisal. The 2004 Lease was signed by Brion Morrisette for CBM LLC, on March 2, 2011, which is seven (7) years later, and it contains a hand written notation that everyone signed and agreed to the terms contained therein.

There is also an **Option Agreement**, which provided CBM with one year to execute a Lease for Parcels 10-17 and 10-18, for a payment of just $1,000, and the right to extend for a second year, for a payment of $15,000. Eglah and Minerva Marsh's **signatures on this document** do not resemble their signatures on any of the other documents, and were not witnessed or notarized. These signatures **appear to be forgeries**.

SEG relies upon a Lease which was purportedly signed on July 30 and August 2, 2012, and a different and significantly altered version of Exhibit Two, which provides for rent at just $5,000 on execution and $34,000 annually for the first two years, with a waiver of year one. Rent for year three rent was to be $65,450, with no increases for four years. The pages of the 2012 Lease are also unnumbered. The new "Exhibit Two" drastically reduced the rents to be paid to Eglah and Minerva Marsh for the use of Parcels 10-17 and 10-18. We have seen **no evidence that they ever knowingly agreed to this rent reduction**, in any capacity.

To the contrary, on August 1, 2016, Eglah Marsh served a **demand letter** stating that rent was due and owing in the amount of $20,000 for year one, $40,000 for year two, and $77,000 for year three. These calculations are clearly based upon the terms in the version of Exhibit Two that was attached to the 2004 Lease. Moreover, the demand letter states that **no payments were ever made to Eglah and Minerva Marsh for rent or the options except for the initial pre-payment of $20,000.**

The letter is evidence that even if Eglah and Minerva Marsh ever did agree to sign a lease for Parcels 10-17 and 10-18, they believed they were agreeing to the payment and option terms in the original version of Exhibit Two, not the payment terms in "new" version of Exhibit Two upon which SEG now relies. In addition, the demand letter is evidence that as of August 2016, the tenant was **in default**, and had been in default **for years**. This is important because it shows that the tenant was also in default **on February 18, 2014, the date when Attorney Morrisette and O'Connor, as "Seller" and SEG as "Buyer" executed an absolute assignment of the "Lease dated August 2, 2012". A defaulted tenant has no authority to assign a Lease without the Landlord's express written consent. There was none.**

All of SEG's claims rest on the contention that there is a valid and enforceable Lease, entered into by all parties with a common understanding and agreement on all material terms. The evidence shows this argument cannot be sustained.

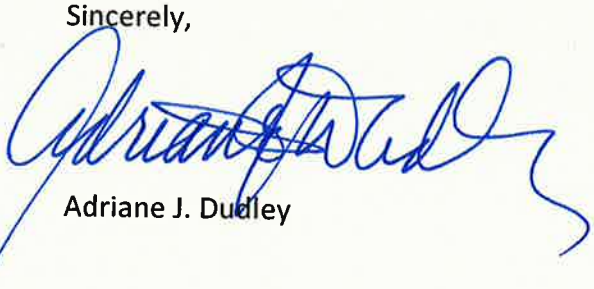
SEG Has No Legal Right to Use or Control Parcels 10-17 and 10-18

In summary, each and every document in SEG's chain of title for its purported rights to develop Parcels 10-17 and 10-18 is defective. The documents are riddled with errors, defects and inconsistencies, and were all prepared, presented, witnessed and executed by persons with numerous conflicts of interest. Minerva and Eglah Marsh are not sophisticated business people. They had no independent counsel. Worse, Brion Morrisette was acting as both family counsel to them, and as a tenant, purchaser and/or interested party in the underlying transactions.

For all of these reasons, we must inform you that unless SEG is willing to resolve these serious issues, which to date it has refused to do, SEG does not have a valid lease and therefore has no legal right to continue to use and control Parcels 10-17 and 10-18 Estate Carolina as part of its development plans.

We cannot conceive of how any investor would agree to fund SEG's development unless and until all issues regarding SEG's right to use Parcels 10-17 and 10-18 are resolved. The title defects cannot be cured without the participation and consent of Eglah and Minerva Marsh. We have offered SEG the opportunity to resolve the amounts due and enter into a new Lease, with proper commercial provisions, and proper legal authority. To date they have refused. Therefore, our clients will be pursuing their legal remedies to remove the cloud on their title and to collect fair compensation from SEG and its processors for the use of their properties.

Sincerely,



Adriane J. Dudley

Cc: Carol Ann Rich, Esq.
Mr. Gary Lopez
Mr. Ernie Clendinen
Ms. Jacquelyn Clendinen
David Cattie, Esq. for SEG