MAJOR COASTAL ZONE MANAGEMENT PERMIT NO. CZT-9-14(W)

I. **AUTHORITY** This permit is issued by the St. Thomas Committee of the Virgin Islands Coastal Zone Management (CZM) Commission and is administered and monitored by the Department of Planning and Natural Resources (the "Department") on behalf of the Coastal Zone Management Commission pursuant to Virgin Islands Code, Title 12, Sections 910 and 911, and any other provisions of Chapter 21 that apply. As herein, **"Permittor"** is the **ST. THOMAS COMMITTEE OF THE VIRGIN ISLANDS COASTAL ZONE MANAGEMENT COMMISSION** and **"Permittee"** is **DIAMOND ROCK FRENCHMAN'S OWNER, INC.**

II. **SCOPE** This permit supersedes Major CZM Permit No CZT-12-90W and allows the Permittee the continued use and occupancy of the following:

- 8,500 yds^3 of soil and rock;
- 750 yds^3 of boulder Rip-Rap on the south shore of Muhlenfels Point;
- A 28 ft. long x 19 ft. wide building;
- A 143 ft. long x 10 ft. wide triangular area occupied by tennis courts on the south shore of Muhlenfels Point;
- 17,615 ft^2 of filled submerged lands south of Muhenfels Point; 26,135 ft^2 of filled submerged land north of Muhenfles Point;
- Intake and outfall pipes for Desalination Plant;
- A 300 ft. fourteen-inch (14") intake line; and
- A 488 sq. ft. pump house

In addition, it authorizes the use of the existing reconstructed fixed dock (a.k.a. finger pier) and its associated leased submerged lands and the installation of 11 buoys offshore of Morning Star beach; two (2) of which are navigational buoys and nine (9) of which are swim buoys.

This project and activities are located seaward of Parcel No. 5A and Submerged Lands Parcels 4F and 5F Estate Bakkeroe, St. Thomas, U. S. Virgin Islands.

III. **TERM** This permit is effective upon its signing by the Chairman of the St. Thomas Committee of the Virgin Islands CZM Commission, approval by the Governor of the Virgin Islands, and approval by the Legislature of the Virgin Islands. As used herein, the "Effective Date" or "the date hereof" means the date of such approval. This permit will expire twenty (20) years after the Effective Date. The Permittee shall have the option to renew the permit within ninety (90) days before the permit expires and the terms are subject to negotiation. This permit is issued for a definite term, twenty (20) years, and shall not constitute a property right. The Permit shall be renewed only if the requirements of Title 12 of the Virgin Islands Code, Section 911, are met.

IV. **DOCUMENTS INCORPORATED BY REFERENCE**

Exhibit A: CZM Permit Application dated August 14, 2014

Exhibit B: Site Plan dated July 22, 2014; revised plans dated September 16, 2015

Exhibit C: Copy of the Environmental Assessment Report dated August 14, 2014

V. GENERAL CONDITIONS

A. Liability The Permittee agrees to assume full and complete responsibility for all liability to any person or persons, including employees, as a result of its control of the area described in Paragraph 2 of this permit, and all improvements thereon (which area and improvements are hereinafter referred to as "the premises"), and to hold the Permittor free and harmless for civil or other liabilities of any kind during the time the Permittee is in control of the premises pursuant to this permit.

B. Personal Property and Damage All personal property of any kind or description whatsoever located on the premises shall be there at the Permittee's sole risk.

C. Assignment or Transfer This permit may not be transferred or assigned except as provided in Section 910-15 of the Virgin Islands Rules and regulations.

D. Permit to be Displayed A placard evidencing the permit shall be posted in a conspicuous place at the project site during the entire work period.

E. Reliance on Information and Data The Permittee affirms that the information and data which it provided in connection with its permit application are true and accurate, and acknowledges that if subsequent to the effective date of this permit such information and data prove to be false or inaccurate, the permit may be modified, suspended or revoked in whole or in part, and that the Commissioner or the Committee may, in addition, institute appropriate legal action.

F. Development to be Commenced Any and all development approved by this Coastal Zone Permit shall begin within twelve (12) months from the date this permit becomes effective and shall be continuous until completion. Failure to commence work within such period and continuously construct thereafter until the completion of construction shall cause the permit to terminate automatically and render it null and void, unless the Permittee requests an extension in writing and demonstrates to the satisfaction of the Committee that good cause exists for granting such extension.

G. Notification of Completion Upon completion of any activity authorized or required by this CZM Permit, the Permittee shall promptly so notify the Director of the Division of CZM and where the services of a professional engineer were required in undertaking the activity, a certification of compliance provided by the project engineer that the plans and specifications of the project and all applicable Virgin Islands Code requirements have been met, shall be filed with said Director.

H. Inspection The Commission, its Committee, the Commissioner or their authorized agents or representatives shall have the power to enter at reasonable times during project working hours upon any lands or waters in the coastal zone

for which this Coastal Zone Permit has been issued. The Permittee shall permit such entry for the purpose of inspection and ascertaining compliance with the terms and conditions of said Coastal Zone Permit. The Permittee shall provide access to such records as the Commission, its Committee, or the Commissioner in the performance of it or his duties under the CZM Act may require the Permittee to maintain. Such records may be examined and copies shall be submitted to the Commission, its Committee or the Commissioner upon request.

I. Conditions of Premises The Development authorized by this permit shall be maintained in a safe condition and in accordance with the description, plans, or drawings approved by the Commissioner or by the Committee, and all applicable Virgin Islands Laws.

J. Public Access to Shoreline The development shall be operated so as to assure optimum public access to the shoreline.

K. Restoration of Area The Permittee, upon renovation or expiration of the permit, shall upon order of the Committee, or the Commissioner, and in their sole discretion, remove all structures authorized by the permit and restore the area to its original condition, and/or modify such structures or site, and/or comply with any directive of the Committee, or the Commissioner in satisfying the original permit conditions in such time and manner as the Committee, or the Commissioner may direct.

L. Notices All notices sent or required to be sent hereunder must be by certified mail, return receipt requested. If addressed to the Permittor, same shall be sent to the Commissioner of the Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building, Second Floor, St. Thomas, Virgin Islands 00802, or to such other place as the Permittor may hereinafter designate. If addressed to the Permittee, same shall be sent to Mr. William J. Tennis, Vice President, Diamond Rock Frenchman's Owner, Inc., c/o The Prentice Hall Corporation System Inc. Waterfront Center, Suite A, 72 Krondprindsens Gade, St. Thomas, VI, 00802, or to such place as the Permittee may hereinafter designate by certified mail, return receipt requested.

M. Non Waiver One or more waivers by the Permittor of any covenant or condition of this permit shall not be construed as a waiver of a further breach of the covenant or condition. The consent or approval of the Permittor to or of any acts by either the Permittee requiring the Permittor's consent or approval shall not be construed as approval of any subsequent similar act by the Permittee.

N. Revocation It is specifically understood that all the foregoing covenants and agreements, as well as other terms and special conditions hereby agreed to by the Permittee, are to be well and faithfully kept by Permittee and that any failure by the Permittee to keep same will result in revocation of this permit.

O. Other Approval If the development covered under this permit requires separate and distinct approval from the United States Government or the Government of the Virgin Islands, or any agency, department, commission or bureau thereof, then no development or occupancy is allowed under this permit until such permits or approvals have been obtained.

P. Abandonment If the Permittee abandon, deserts or vacates the premises or discontinues its operation at the premises for a period totaling six (6) consecutive months, the permit will terminate automatically and be rendered null or void.

Q. Signatures on the Permit Document The Permittee shall sign and return the permit document to the Department within sixty (60) days of receipt thereof. Failure to return the signed permit within the time period specified herein will be considered a rejection of the terms and conditions of the permit and will render the offer of the permit null and void, unless the Permittee requests a written extension and the Department grants the written extension.

R. Damage and Repair of Premises Described in Paragraph 2 In the event of damage to or destruction of the premises, described in paragraph 2 hereof, repair work may be done only after a request to do so has been submitted in writing to the Department and written permission has been granted by the Department.

VI. SPECIAL CONDITIONS

1. *The facility may not be used to berth liveaboards. Liveaboards are defined herein as any vessel docked for more than four (4) consecutive days, and used as a place of lodging or sleeping accommodations instead of, in lieu of or in addition to any other residence or lodging place, shall not be allowed or permitted.*
2. *No dredging shall be permitted during term of this permit.*

VII. FEES The rental fees for the use and occupancy of the submerged and/or filled submerged lands as described in "SCOPE" are assessed pursuant to 12 VIC §911(f) and have been negotiated with the Permittee pursuant to 12 VIRR §910-5(e). The initial payment under this permit is due upon receipt of the effective permit, and subsequent payments are due on the anniversary of the effective date. Payments are to be made to the Department of Planning and Natural Resources.

A. A rental fee of Sixty-Three Thousand Dollars **($63,000.00)** per year, payable annually in advance, shall be charged for the use and occupancy of the submerged lands area occupied under this permit.

B. Upon the fifth (5th) anniversary of this permit, the rental fees payable under this permit shall be adjusted in accordance with the U.S. Department of Labor Consumer Price Index (CPI-U) for All Urban Consumers, All Items, and shall be calculated using the CPI Inflation Calculator located on the website of the Bureau of Labor Statistics of the United States Department of Labor (http://www.bls.gov/data/inflation_calculator.htm) using the previous year as the Base Year for comparison, provided.

C. During the ninth (9th) year of this permit, the rental fees are to be renegotiated pursuant to 12 VIRR §910-5(e). The renegotiated rental fees shall be payable

beginning on the tenth (10th) anniversary of this permit. Failure by the Permittee to renegotiate the rental fees with the Department will result in an automatic increase of the fees by 25% of the previous annual fee.

D. Upon the fifteenth (15th) anniversary of this permit, the rental fees shall be adjusted pursuant to the Consumer Price Index in the manner described in "VII. B."

E. In no event shall any rent determined in the above manner be reduced below the annual rent of $63,000.00.

F. In the event that any installment of rent or any other charge due from Permittee is not received by Government within ten (10) days of the date due, Permittee shall pay to Government a late charge calculated at 10% of the amount then past due.

IT IS EXPRESSLY UNDERSTOOD by the parties hereto that the title to all submerged or filled land which is altered or occupied on the basis of this permit is the Government of the Virgin Islands, and the Permittee shall have no right or interest therein, of any kind whatsoever, other than such rights as are expressly set forth herein, and that this instrument is not a lease.

IN TESTIMONY WHEREOF, the parties herein have hereunto set their hands and seals on the days and years appearing herein below.

ST. THOMAS COMMITTEE OF THE VIRGIN ISLANDS CZM COMMISSION
Permittor

Austin M. Monsanto
Chairman

10/13/15
Date

DIAMOND ROCK FRENCHMAN'S OWNER, INC.
Permittee

William J. Tennis
Vice President

9-28-2015
Date

APPROVED
Governor of the Virgin Islands

The Honorable Kenneth E. Mapp
Governor of the Virgin Islands

11-10-15
Date

APPROVED
Legislature of the Virgin Islands

The Honorable Neville James
President of the Virgin Islands 31st Legislature

Date

I, William J. Tennis, Vice President, Diamond Rock Frenchman's Owner, Inc. /Permittee of Parcels 5-A and Submerged Land Parcels 4F and 5F Estate Bakkero, do hereby certify that as Vice President for Diamond Rock Frenchman's Owner, Inc. of Parcels 5-A and Submerged Land Parcels 4F and 5F Estate Bakkero, I am duly authorized and empowered to sign this Permit.

William J. Tennis

9-28-2015
Date

SWORN AND SUBSCRIBED before me

this 28th day of September

Cheryl Van Vliet
Notary Public

CHERYL VAN VLIET
COMMISSION EXPIRES
12/08/2017
MONTGOMERY COUNTY, MD
NOTARY PUBLIC

Basis For Negotiations
Diamond Rock Frenchman's Owner, Inc.

I. General Information

Permit No.	CZT-9-14(W)
Applicant:	Diamond rock Frenchman's Owner, Inc.
Location:	Seaward of 5-A and Submerged Land Parcels 4F& 5F Estate Bakkero, St. Thomas
Action:	Continued use and occupancy of items outlined in and of submerged land area described in Section II Scope of CZM Permit No. CZT-9-14(W).

II. Activity

The Permittee is requesting a new lease for the continued use and occupancy of the following:

- 8,500 yds^3 of soil and rock (26,135 sq.ft.)
- 750 yds^3 of boulder Rip-Rap on the south shore of Muhlenfels Point.
- A 28 ft. long x 19 ft. wide building,
- A 143 ft. long x 10 ft. wide triangular area occupied by tennis courts on the south shore of Muhlenfels Point. (715 sq.ft.)
- 17,615 ft^2 of filled submerged lands
- Intake and outfall pipes for Desalination Plant
- A 300 ft. fourteen-inch (14") intake line
- A 488 ft^2 pump house

In addition, the permittee requests the use of the existing 40'x4' reconstructed fixed dock (a.k.a. finger pier) and its associated leased submerged lands (200 ft^2 boat mooring at pier) also the installation of 11 buoys offshore of Morning Star beach; two (2) of which are navigational buoys and nine (9) of which are swim buoys.

No new construction is associated with this permit.

III. FMV Plot No. 5-A and Estate Bakkero - $3,480,900/ 7.58 acres = $459,221.63/acre (Tax Assessors Office)

Calculations

Total square footage of structures = 40.00'x 4.0'= 160.00 ft^2 = .0037 acres:
$459,221.63/per acre x .0037 acres = $1,699.12 x 12% = **$203.89**

Total square footage for submerged area surrounding the structures = 200.0 ft^2 or 0.005 acres:
$459,221.63/per acre x .005 acres = $2,107.97 x 12% = **$252.95**

Total square footage for filled submerged areas = 26,135 ft^2 + 16,900 ft^2 + 715 ft^2 = 43,750 ft^2 or 1.004 acres:
$459,221.63/per acre x 1.004 acres = $461,058.51 x 10% = **$46,105.85**

Total for swimming and navigational markers = $200.00 x 11 markers = **$2,200.00**

Total for 14" intake line = $3,500.00 x 6.09% = **$3,713.15**

IV. ***Fees***

Total amount for occupying submerged and filled submerged lands based on FMV=

$203.89 + $252.95 + $46,105.85 + $2,200.00 + $3,713.15 = $52,475.84

Annual fee negotiated = $63,000.00 per year

Said fee is comprised of:
$5,000 for dock structure
$800 for water area surrounding the dock
$51,000 for filled submerged lands
$2,500 for swimming and navigational markers
$3,700 for intake line