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August 26, 2025

Senate President Hon. Milton E. Potter
Legislature of the Virgin Islands
Capitol Building, Charlotte Amalie
P.O. Box 1690
St. Thomas, Virgin Islands 00804

Subject: Memorandum of Testimony
Request for Extension and Modification of Coastal Zone Management Permits
Nos. CZJ-04-14(W) and CZJ-0J-14(L)

President Potter and Senators of the Thirty-Sixth Legislature:

My name is John Benham, and I am an attorney for The Summer's End Group, LLC ("Summer's End"), the Permittee. I have been a full-time resident of the Virgin Islands since moving here in December 1987 and have been fully admitted to practice law in the Virgin Islands since 1989. Attorney Boyd Sprehn and I have represented and advised Summer's End since the infancy of this project in 2014. This Memorandum summarizes the legal authority supporting the request for extension and modification submitted by Governor Hon. Albert Bryan, Jr. to the Legislature on or about July 31, 2025. This Memorandum of Testimony is submitted on behalf of the Permittee - The Summer's End Group, LLC ("Summer's End").

The legal authority of the Legislature to act upon and ratify the current request of the Governor is now well established. In 2020 the Thirty-Third (33rd) Legislature, acting on the request of the Governor to modify the referenced consolidated Coastal Zone Management (CZM) permits passed Bill No. 33-0428. This bill ratified the first modification of these consolidated permits. This bill modifying the permits was subsequently signed by Governor Bryan as Act No. 8407.

The enactment of Act. No. 8407 was challenged by opponents of the project in *Save Coral Bay, Inc. v. Bryan*, 76 V.I. 505 (2022), *cert. denied* 143 S.Ct. 233 (2022). The opponents argued that the passage of Act No. 8407 violated the terms of the Coastal Zone Management Act ("CZM Act"), and modification of the permits required the return of the permits to the St. John CZM Committee. The Supreme Court of the Virgin Islands firmly rejected that argument, holding that the passage of Act No. 8407 was a valid exercise of the Legislature's "exceptionally broad discretion in determining how it will exercise its power and authority to make the law". *Save Coral Bay*, 76 V.I. 505, 511. The Supreme Court emphasized that the ratification of the modified permit was an exercise of the power of the Legislature, not the Governor or the Executive Branch alone. *Id. at 510*. Accordingly, while the request for extension and modification has originated from the Governor, the ultimate authority to enact the changes is an exercise of legislative authority.

The opponents of the project sought review of this decision by a petition for writ of certiorari to the United States Supreme Court. This petition was denied by the Court. *Save Coral Bay, Inc. v. Bryan*, 143 S.Ct. 233 (2022). This denial of review by the United States Supreme Court means that the decision of the Supreme Court of the Virgin Islands is the controlling law on this issue.

Even after the definitive *Save Coral Bay* rulings, another opponent of the project filed a lawsuit in the District Court of the Virgin Islands. *The Moravian Church Virgin Islands Conference A/K/A Moravian Church Conference of The Virgin Islands v. Government of the Virgin Islands and The Summer's End Group, LLC*, Case No. 3:22-cv-0062, D.V.I., Division of St. Thomas & St. John. This collateral attack on the *Save Coral Bay* decision was found to be meritless. The District Court granted summary judgment in favor of Summer's End and the Government on March 28, 2025. No appeal was taken from that decision and the District Court's ruling is final.

The legal precedent is thus well established that this Legislature is the proper body to consider the Governor's request, and that there is no requirement to return these permits for further review by the St. John CZM Committee. The current request seeks only to extend the effective date of the permit, and to reduce the size of the marina project. These changes are needed to accommodate and comply with the federal permitting requirements.

This project, which has been in process since 2014, has overcome all legal challenges presented by the opponents – every court and regulatory agency has affirmed the legality of the project, the viability of the project, and the positive economic impact which will accompany both the construction and operation of the marina. The positive effects will not only be a boost to the local economy but extend to what will be a massive physical improvement to Coral Harbor itself. The waters and seabed of Coral Harbor have been massively degraded and polluted by the dumping of refuse and the untreated sewage produced by numerous vessels occupying moorings (both permitted and illegal) in the harbor. The development of the marina project includes the clean-up of harbor floor, a reduction in the number of moored vessels and a sewage pump out station as part of the marina's facilities.

The only matter before this Legislature is the extension of the permit life and the reduction in marina slips to match the federal permit requirements. A refusal to extend the permit life will endanger the long-sought private financing needed to bring this project to fruition. This project has survived only by the hard work of the principals of Summer's End, ongoing since 2014. Allowing the permit to lapse will not only jeopardize this project but will send a chilling message to anyone else considering significant private investment in the Virgin Islands. The Virgin Islands cannot rely on government largesse for a viable economy, it must be created by the private sector, as is contemplated by the Summer's End marina project.

Respectfully submitted,

/s/ John H. Benham
/s/ Boyd L. Sprehn