

BILL NO. 33-_____

THIRTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS

Special Session

2020

An Act repealing and replacing Act Nos 8329 and 8330; amending title 29 Virgin Islands Code, by repealing chapter 24 in its entirety and replacing it with a new chapter 24; terminating the existence of the “Matching Fund Securitization Corporation”; creating, as of the date hereof, a new entity named the “Matching Fund Securitization Corporation” to: (1) acquire all of the Virgin Islands Government’s right, title, and interest in the Matching Fund Receipts to be paid to or for the account of the Government by the United States Treasury during the Transfer Period and the Related Rights, (2) issue Matching Fund Securitization Bonds and the Residual Certificate in order to pay the purchase price therefor and as otherwise authorized under the act, and (3) direct the Secretary and the United States Department of Interior to pay the Matching Fund Receipts directly into the Deposit Account; to approve and ratify all actions taken pursuant to Act Nos 8329 and 8330 prior to the date hereof; to ratify the amendments to the rum company agreements; and for other related purposes.

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WHEREAS, the Legislature of the Virgin Islands (“Legislature”) previously authorized the issuance of bonds, notes, or other evidences of indebtedness (as hereinafter defined as the “Existing PFA Bonds”) of the Government of the Virgin Islands (the “Government”) and/or the Virgin Islands Public Finance Authority (“PFA”) to provide funds to finance all or a portion of the costs of certain infrastructure and economic development projects to support the production of rum by Cruzan VIRIL, Ltd. (“Cruzan”) and Diageo USVI, Inc. (“Diageo”) in the Virgin Islands;

WHEREAS, the Legislature previously authorized the Government to enter into certain agreements with Cruzan and Diageo in connection with the financing of the costs;

WHEREAS, the Legislature has determined that it is necessary to repeal Act Nos 8329 and 8330, thereby repealing title 29 Virgin Islands Code, chapter 24 in its entirety and replacing it with a new chapter 24;

WHEREAS, the Legislature has determined that the Matching Fund Receipts (as hereinafter defined) from the United States Treasury can be more efficiently used by creating a new special purpose vehicle to serve as an independent and autonomous public corporation and governmental instrumentality (“Corporation”) whose purpose would be to acquire all of the Government’s rights, title, and interest in and to the Matching Fund Receipts during the Transfer Period, to issue Bonds and the Residual Certificate, as such terms are hereinafter defined, in order to pay the purchase price therefor and as otherwise authorized, and to direct the Secretary of the U.S. Treasury and the United States Department of the Interior (the “DOI”) to pay the Matching Fund Receipts directly into the trust account established in the name of the Government, in trust for the sole benefit of the Corporation and the Corporation’s collateral assignee, the trustee for the

Bonds (the “GVI Restricted Account”) (all such steps being collectively referred to as, the “Transaction”);

WHEREAS, the Legislature has determined that to fulfill the objectives of the Transaction, it is necessary for the Government to apply the proceeds from the sale of the Matching Fund Receipts to prepay the Existing Matching Fund Loan Notes, as hereinafter defined, so that the PFA may refund, redeem, pay and defease all of its Existing PFA Bonds;

WHEREAS, the Legislature wishes to continue to use the Matching Fund Receipts that it receives from the U.S. Treasury to support its investment in infrastructure and economic development projects in the Virgin Islands, but to do so on a more efficient basis;

WHEREAS, the Legislature acknowledges that providing for a statutory lien on the assets of the Corporation to secure the payment on the Bonds and on the ancillary agreements entered into in connection with the Transaction would serve the interests of the Government;

WHEREAS, the Legislature seeks to authorize the Government to assign, sell, transfer or otherwise convey its interest in the Matching Fund Receipts that are to be received from the U.S. Treasury as long as the Bonds are outstanding and to provide the Related Rights (as hereinafter defined) to the Corporation in connection with such sale;

WHEREAS, the Legislature seeks to authorize the Corporation to issue Bonds the proceeds of which must be used to purchase from the Government all of its rights, title and interest in and to the Matching Fund Receipts and the Related Rights and pay the related costs of the issuance;

WHEREAS, the Legislature seeks to authorize the Government to use the cash purchase price for the Matching Fund Receipts and the Related Rights to prepay all Existing Matching Fund Loan Notes owing to the PFA so that the PFA may, in turn, refund, redeem, pay and defease all Existing PFA Bonds that secure the Existing Matching Fund Loan Notes, thereby releasing the existing liens on the Matching Fund Receipts so that they can be sold and conveyed to the Corporation;

WHEREAS, in addition to the cash purchase price for the Matching Fund Receipts, the Government is to receive a Residual Certificate, pursuant to which the Government will have rights to the portion of the Matching Fund Receipts deposited by the U.S. Treasury into the GVI Restricted Account and then transferred into the deposit account of the Corporation and which remain after the Corporation pays the debt service and expenses in connection with the bonds and other obligations;

WHEREAS, the Legislature has determined that the issuance of the initial Bonds and the Residual Certificate is expected to ultimately result in increased receipts to the Government on a net present value basis by way of the Residual Certificate as compared to the residual receipts that would have been expected to be available to the Government had the Existing Matching Fund Loan Notes and Existing PFA Bonds remained outstanding due to the Corporation’s expected lower borrowing costs when compared to the borrowing costs of the Government; and

WHEREAS, the Legislature has determined that certain amendments to the existing agreements with Cruzan and Diageo and other new agreements are necessary to carry out the transactions contemplated by this act; *Now, Therefore*,

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. (a) Act Nos 8329 and 8330 are hereby repealed and replaced in their entirety with the provisions hereof, and (b) the existence of the “Matching Fund Securitization Corporation,” created on August 31, 2020, is hereby terminated and it ceases to exist.

SECTION 2. Title 29 Virgin Islands Code is amended by inserting a chapter 24 to read as follows:

“Chapter 24. The Matching Fund Securitization Corporation

§ 1401. Short Title

This chapter may be cited as “The Matching Fund Securitization Act of 2020.”

§ 1402. Definitions

For the purposes of this chapter, the following terms have the meanings set forth in this section:

(a) “Additional Bonds” means one or more additional series and/or tranches of Bonds issued pursuant to the Indenture or another indenture after the Initial Matching Fund Securitization Bonds are issued.

(b) “Ancillary agreements” means the Sale Agreement, the Indenture, any supplemental indentures, other indentures, the bond purchase agreement between the Corporation and the bond purchasers, security enhancement agreements, investment agreements, or any other agreement or instrument entered into by the Corporation, the Government, or the Trustee in connection with, or in furtherance of, the sale and conveyance of the Matching Fund Receipts and the Related Rights pursuant to this chapter and the issuance of the Bonds.

(c) “Bonds” means the Matching Fund Securitization Bonds and the Subordinate Lien Bonds issued pursuant to the Indenture or other indenture.

(d) “Bondholder” means a registered owner of an outstanding Bond.

(e) “Code” means the Internal Revenue Code of 1986, as amended, and applicable regulations.

(f) “Corporation” means the Matching Fund Securitization Corporation established by section 1404.

(g) “Cut-Off Date” means November 1, 2020.

(h) “Deposit Account” means a designated account in the name of the Corporation created and held by the Trustee pursuant to the Indenture at a bank or trust company having the authority to receive the transfer of the Matching Fund Receipts from the GVI Restricted Account and having trust powers under the Indenture.

(i) “DOI” means the United States Department of the Interior.

(j) “Existing Matching Fund Loan Notes” means the outstanding special obligation notes issued to the Public Finance Authority by the Government pursuant to the Loan Agreement dated July 1, 2009, the Loan Agreement dated October 1, 2009, the Loan Agreement dated December 1, 2009, the Loan Agreement dated July 1, 2010, the Loan Agreement dated September 1, 2012, the Loan Agreement dated September 1, 2013, and the Loan Agreement dated October 1, 2013, each by and among the Public Finance Authority, the trustee and the Government, which Loan Notes are the security for the repayment of the corresponding Existing PFA Bonds.

(k) “Existing PFA Bonds” means the various series of outstanding bonds issued by the Public Finance Authority pursuant to an Indenture of Trust dated May 1, 1998, as amended and supplemented, a Subordinated Indenture of Trust dated June 1, 2009, as supplemented, and a Subordinated Indenture of Trust dated December 1, 2009, as supplemented, secured by Matching Fund Receipts on a senior and subordinate basis, respectively, received by the Government from the U.S. Treasury.

(1) “Financing costs” means all costs associated with the following:

(1) the issuance, repayment, financing, or refinancing of the Bonds, whether upon issuance or over the term of the Bonds,

(2) the making of payments required by the ancillary agreements,

(3) the preparation for and the entering into the transactions authorized by this chapter,

(4) the maintenance, preservation, protection, and defense of the Trust Estate, including any collection, enforcement, sale, protection or settlement actions relating to the Trust Estate,

(5) the confirmation, defense and protection of the statutory lien and the consensual lien on the Trust Estate,

(6) the performance of all ongoing activities relating to the Matching Fund Securitization Bonds, the Residual Certificate, the Subordinate Lien Bonds, the Matching Fund Receipts, any ancillary agreements, and the Trust Estate, and

(7) for the compensation and expenses of or relating to the independent directors of the Corporation.

(m) “Financing entity” means the Corporation, the Trustee and any other person or entity acting for the benefit of the Bondholders or the Corporation that has rights under any ancillary agreements.

(n) “Government” means the Government of the Virgin Islands.

(o) “Governor” means the Governor of the Virgin Islands or his designee as may be named from time to time.

(p) “GVI Restricted Account” means the trust account established in the name of the Government, in trust for the sole benefit of the Corporation and the Corporation’s collateral assignee, the Trustee.

(q) “Indenture” means the master trust indenture, bond indenture, trust agreement or similar agreement between the Corporation and the Trustee, as amended or supplemented from time to time, from the date of the issuance of the Initial Matching Fund Securitization Bonds and the Residual Certificate.

(r) “Initial Matching Fund Securitization Bonds” means the initial series of Matching Fund Securitization Bonds issued pursuant to the Indenture.

(s) “Matching Fund Receipts” means the amounts paid and to be paid by the U.S. Treasury through the Secretary of DOI as a transfer of federal excise taxes imposed and collected under the Code in any fiscal year on rum produced in the Virgin Islands and exported to the United States and that is subject to federal excise tax pursuant to 26 USC §7652, as amended from time to time.

(t) “Matching Fund Securitization Bonds” means the Initial Matching Fund Securitization Bonds and any Additional Bonds issued on a parity therewith, which bonds may be issued as taxable or tax-exempt bonds, authorized to be issued by the Corporation from time to time pursuant to the Indenture or other indenture. Neither the Residual Certificate nor any Subordinate Lien Bond is a Matching Fund Securitization Bond.

(u) “Public Finance Authority” means the Virgin Islands Public Finance Authority, a public corporation and governmental instrumentality of the Government.

(v) “Related Rights” means the contractual rights provided by the Government, the covenants made by the Government, and the Corporation’s rights to enforce the rights and covenants, all pursuant to the Act and the Sale Agreement.

(w) “Residual Certificate” means a certificate issued by the Corporation evidencing the right of the holder to receive any Residual Receipts on deposit in the Residual Fund.

(x) “Residual Certificate Holder” means the holder or holders of the Residual Certificate. Upon its issuance by the Corporation, the Residual Certificate Holder is the Government.

(y) “Residual Fund” means the fund or account so designated, created and established pursuant to the Indenture into which the Residual Receipts are deposited.

(z) “Residual Receipts” means that portion of the Matching Fund Receipts deposited in the Residual Fund, if any, after making the deposits required in each fiscal year for the following, in the order of priority provided in the Indenture:

- (1) Payment of debt service on the Bonds;
- (2) Establishing, maintaining, or replenishing any reserve funds created in connection with the issuance of the Bonds;
- (3) Payment of any other obligations of the Corporation under any ancillary agreement; or
- (4) Payment of the operating expenses of the Corporation.

(aa) “Resolution” means one or more resolutions by the board of directors of the Corporation, adopted in accordance with this chapter, authorizing:

- (1) the Corporation’s purchase of the Matching Fund Receipts and the Related Rights,
- (2) the issuance of one or more series of Bonds,
- (3) any redemption, defeasance or refunding of Bonds, and
- (4) the execution and delivery of the Indenture, any other indenture, any supplemental indenture, and any ancillary agreement.

(bb) “Sale Agreement” means an agreement between the Corporation and the Government that provides for the irrevocable transfer, pursuant to section 1403 and the Resolution, to the Corporation of all of the Government’s right, title, and interest in and to the Matching Fund Receipts paid and to be paid by the U.S. Treasury to the Government, by depositing such amounts into the GVI Restricted Account, during the Transfer Period and the Related Rights, in exchange for:

- (1) a cash payment of the net proceeds from the sale of any Matching Fund Securitization Bonds and any Subordinate Lien Bonds, and
- (2) the Residual Certificate.

(cc) “Secretary” means the Secretary of the U.S. Treasury.

(dd) “Subordinate Lien Bonds” means Bonds that may be issued by the Corporation from time to time after the issuance of the Initial Matching Fund Securitization Bonds pursuant to a Resolution and an indenture, which Bonds are secured by a subordinate pledge on the Matching Fund Receipts and the Related Rights.

(ee) “Transfer Period” means the period from and including the Cut-Off Date through and including the date on which the last outstanding Bond is paid or defeased and all obligations under the Indenture and the ancillary agreements are paid in full.

(ff) “Trust Estate” means the right, title, and interest in and to:

- (1) the Corporation’s interest in the funds in the GVI Restricted Account,
- (2) the Matching Fund Receipts paid and to be paid to the Corporation during the Transfer Period and the Related Rights,
- (3) all earnings, interest, claims, credit enhancement payments, and proceeds of or arising from the Matching Fund Receipts and any adjustments to and from the Related Rights, and
- (4) all rights of the Corporation under the Sale Agreement and all other ancillary agreements. The Trust Estate may not include any Residual Receipts.

(gg) “Trustee” means the bank or trust company appointed as “Trustee” for the Bonds pursuant to the Indenture and having the duties, responsibilities and rights provided for in the Indenture, and its successor or successors and any other bank or trust company that may at any time be substituted in its place pursuant to the Indenture.

(hh) “U.S. Treasury” means the United States Department of the Treasury.

(ii) “Virgin Islands” means the unincorporated territory of the United States of America as described in the Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1541 (a).

§ 1403. Authority to Sell and Transfer the Matching Fund Receipts and Provide Related Rights

(a) For the purposes of prepaying the Existing Matching Fund Loan Notes so that the Public Finance Authority may, in turn, refund, redeem, pay or defease all Existing PFA Bonds secured thereby, releasing the existing liens on the Matching Fund Receipts so that the Government may more efficiently leverage the value of the Matching Fund Receipts, the Government may sell to the Corporation all of the Government’s right, title, and interest in and to the Matching Fund Receipts and the Related Rights and any earnings or interest payable to the Government during the Transfer Period at a purchase price equal to the net proceeds from the sale of the Initial Matching Fund Securitization Bonds, less the costs associated with the sale, plus the Residual Certificate. Prior to the sale, the U.S. Treasury shall first have acknowledged in writing that it will deposit Matching Fund Receipts directly into the GVI Restricted Account.

(b) The Government may transfer all or a portion of the Residual Certificate upon the conditions set forth in the Indenture.

(c) The right to receive the Matching Fund Receipts during the Transfer Period and to exercise and enjoy the Related Rights is a vested, presently existing property right notwithstanding

that the amounts of the Matching Fund Receipts to be paid in the future will depend on further acts that have not yet occurred, including but not limited to:

- (1) the production of rum in the Virgin Islands,
- (2) the sale and export of the rum to the United States,
- (3) adjustments that may be made to the rate or amount of the Matching Fund Receipts to be paid by the U.S. Treasury, and
- (4) the U.S. Treasury paying the Matching Fund Receipts directly into the GVI Restricted Account, as irrevocably directed by the Government.

(d) Subject to the authorization and restrictions of this chapter, the Governor shall determine the terms and conditions of the Sale Agreement, which determination must be conclusively evidenced by his execution of the Sale Agreement. Once sold pursuant to the Sale Agreement, the Matching Fund Receipts that would have been paid to the Government during the Transfer Period, and the Related Rights, regardless of location, completion of any transfer process, or whether deposited into the GVI Restricted Account, are no longer the property of the Government, and the Government has no right to obtain the return of the Matching Fund Receipts or to exercise and enjoy any of the Related Rights, except as agent for the Corporation or the Trustee, as the case may be. Once sold pursuant to the Sale Agreement, only the Corporation or the Trustee may transfer Matching Fund Receipts from the GVI Restricted Account. But for so long as the Government is the Residual Certificate Holder, it must receive payment of the Residual Receipts in the Residual Fund in accordance with the Indenture solely by virtue of being the Residual Certificate Holder.

(e) The Government shall cause the net proceeds from its sale of the Matching Fund Receipts and the Related Rights to be placed in one or more separate accounts and used to prepay the Existing Matching Fund Loan Notes and pay all costs associated with the prepayment, and if funds remain in those accounts after the prepayment of the Existing Matching Fund Loan Notes and the payment of all related costs, the funds must be released to the Government for any purpose authorized by an act of the Legislature. In no event shall amounts paid to purchase the Matching Fund Receipts and the Related Rights be available or be applied for payment of the Matching Fund Securitization Bonds, the Subordinate Lien Bonds, the Residual Certificate, any claim against the Corporation, or any debt or obligation of the Corporation.

(f) Upon the Public Finance Authority's receipt of the funds from the prepayment of the Existing Matching Fund Loan Notes by the Government, the Public Finance Authority shall be obligated to, and shall, use the amounts to cause all the Existing PFA Bonds to be redeemed or defeased in full and shall be obligated to, and shall, pay in full all other amounts outstanding under the indenture and other documents related to the Existing PFA Bonds. In no event shall amounts paid to prepay the Existing Matching Fund Loan Notes be available or be applied for payment of the Matching Fund Securitization Bonds, the Subordinate Lien Bonds, the Residual Certificate, any claim against the Corporation, or any debt or obligation of the Corporation.

(g) The Government shall provide, on a timely basis for each fiscal year to:

(1) to the DOI with a copy to the Corporation, an estimate of the amount of rum to be produced in the Virgin Islands and exported to the United States for the ensuing fiscal year, and

(2) to the Corporation, any information required to make the request for any adjustment to the Matching Fund Receipts for such year.

(h) The Government shall deliver one or more agreements or instruments, including an irrevocable letter of instruction, and in each and every instance under subsection (g)(1), directing the Secretary and DOI to cause to be promptly transferred to the GVI Restricted Account any and all payments of the Matching Fund Receipts, including any transferred in error, during the Transfer Period.

(i) The Government, acting by the Governor, may execute and deliver all documents and agreements and take all actions necessary or appropriate in connection with the sale and conveyance of the Matching Fund Receipts and the Related Rights pursuant to this chapter and the prepayment of the Existing Matching Fund Loan Notes, and to take all actions permitted or required by this chapter and included in the Sale Agreement and to accomplish the purposes hereof and thereof.

(j) The Public Finance Authority may execute and deliver all documents and agreements and take all actions necessary or appropriate in connection with the redemption or defeasance in full of the Existing PFA Bonds and the payment in full of all other amounts outstanding under the indenture and other documents related to the Existing PFA Bonds.

(k) The Government shall cause a report of the final amount and disposition of the net proceeds from the sale of the Matching Fund Receipts and the Related Rights to be made to the Legislature of the Virgin Islands.

§ 1404. The Corporation

(a) The Matching Fund Securitization Corporation is established as a special purpose, independent and autonomous, public corporation and governmental instrumentality of the Government of the Virgin Islands. The Corporation is intended, created, and empowered to effectuate the purposes stated in this chapter. The Corporation has a legal existence separate from the Government. The debts, obligations, contracts, bonds, receipts, expenditures, accounts, funds, facilities and property of the Corporation are those of the Corporation and not those of the Government, or any office, bureau, department, agency, commission, branch, agent, office or employee of the Government. The Corporation is not created or organized, and its operations may not be conducted, for the purpose of making a profit.

(b) The purposes of the Corporation are to:

(1) acquire all of the Government's right, title, and interest in and to the Matching Fund Receipts to be paid to or for the account of the Government by the U.S. Treasury during the Transfer Period and the Related Rights,

(2) issue Bonds and the Residual Certificate in order to pay the purchase price therefor and as otherwise authorized under this chapter, and

(3) direct the Secretary and the DOI to pay the Matching Fund Receipts directly into the GVI Restricted Account.

(c) The Corporation shall, pursuant to a Resolution:

(1) issue the Initial Matching Fund Securitization Bonds as contemplated by a Resolution, and use the net proceeds to purchase and acquire the Government's right, title and interest in and to the Matching Fund Receipts to be paid to or for the account of the Government during the Transfer Period and the Related Rights, and own, hold and use the Trust Estate and pay any related closing costs and ongoing financing costs;

(2) direct that Matching Fund Receipts deposited in the GVI Restricted Account and then transferred to the deposit account created by the Trustee for the Matching Fund Securitization Bonds be applied by the Trustee to the payments, at the times and in the order of priority, set forth in the Indenture;

(3) in addition to the statutory lien on the Trust Estate securing the payment of principal of and interest on the Bonds as referred to in section 1405(i), as additional security for the payment of principal of and interest on any Bonds issued by it and of any and all other obligations under the applicable indenture, pledge and automatically create a security interest that shall be a consensual lien on the Trust Estate, and take any and all actions to create, impose and document the liens or other encumbrances that arise by force of this chapter;

(4) by the earlier of the date requested by the U.S. Treasury or such other deadline provided by law, for each fiscal year during the Transfer Period, when appropriate, deliver to the DOI a written letter requesting any adjustment to the amounts based on actual federal excise taxes paid on rum produced in the Virgin Islands and exported to the United States, with the adjustment to be applied to the amount of the Matching Fund Receipts paid to the Corporation in the ensuing year;

(5) if authorized in the future by the Legislature, issue Additional Bonds for purposes related to the Corporation as contemplated by a Resolution, and use the proceeds as contemplated in the related indenture or supplemental indenture and pay any related closing costs and ongoing financing costs; and

(6) issue the Residual Certificate as described in section 1403(a).

(d) So long as any Bonds remain outstanding, the Corporation may not merge or consolidate, directly or indirectly, with any person or entity. In addition, the Corporation may not incur, guarantee or otherwise become obligated to pay any debt other than the Bonds, the Residual Certificate, or obligations other than those incurred pursuant to ancillary agreements and the related financing costs. The Corporation shall keep its assets and liabilities separate and distinct from those of any other entity.

(e) The Corporation has no authority to engage in any business activities other than those provided in this chapter. In connection with the authority provided in this chapter, the Corporation has the power to:

(1) Adopt, amend, repeal, and enforce bylaws, rules, regulations, and procedures as it determines appropriate to the governing of its affairs and the conduct of its business and that are not inconsistent with this chapter;

(2) Sue and be sued, and to complain and defend, in its own name;

(3) Adopt, alter, and use a corporate seal, which must be judicially noticed, but the absence of the seal on a contract or other documents does not affect its validity;

(4) Acquire, hold, or pledge, contract rights, general intangibles, revenues, moneys, and accounts as may be proper or expedient to carry out the purposes of the Corporation and this chapter, and to assign, convey, sell, transfer, lease or otherwise dispose of such property;

(5) Establish and maintain such reserves and special accounts, for the benefit of the Bondholders, to be held in trust or otherwise, as may be required by agreements made in connection with the Bonds, or any agreement between itself and third parties;

(6) Redeem, defease, or otherwise refund the Bonds in accordance with the terms of the Indenture as long as the redemption, defeasance or refunding does not, solely by such action, reduce the expected Residual Receipts to the Residual Certificate Holder on a net present value basis compared to the net Residual Receipts that would have been expected to be available to the Residual Certificate Holder had the Bonds remained outstanding unless the Residual Certificate Holder otherwise consents to such action;

(7) Consistent with the statutory lien on the Trust Estate, execute and deliver one or more agreements or other instruments pursuant to which it shall take all actions necessary or appropriate to cause the Matching Fund Receipts to be paid directly from the U.S. Treasury into the GVI Restricted Account and which amounts shall be transferred to the deposit account where they must be maintained in the custody of the Trustee and must be held separate from any other funds and accounts of the Government or the Corporation or a bank or trust company;

(8) Elect, appoint, and employ officers and agents as the Corporation considers advisable to operate and manage the affairs of the Corporation, and to define their duties and fix, adjust, and define their compensation as it determines to be appropriate;

(9) Make, execute, and perform contracts, commitments, agreements, indentures, instruments and ancillary agreements, in connection with the issuance of, security for, or administration of, the Bonds and the Residual Certificate, as approved by its board of directors and as necessary or appropriate to accomplish the purposes of the Corporation and this chapter;

(10) Select, retain, and employ professionals, contractors, agents, bond insurance providers, or rating agencies that are necessary or appropriate to enable or assist the Corporation in carrying out the purposes of the Corporation;

(11) Pay its financing costs, scheduled debt service on the Bonds and related financing costs;

(12) Indemnify or insure members of the board of directors and officers of the Corporation as it determines appropriate;

(13) Purchase insurance or self-insure against loss in connection with its property and other assets or other risks, in amounts and from insurers as it determines appropriate;

(14) Invest any funds or other moneys under its custody and control in investment securities or under any ancillary agreement pursuant to the terms of the Indenture;

(15) Do all things necessary or appropriate to enforce its rights and require other parties to fulfill their obligations hereunder and under the ancillary agreements; and

(16) Do all things necessary or appropriate to carry out its purposes and exercise the powers expressly given and granted in this chapter.

(f) Board of Directors.

(1) The Corporation is governed by a board of directors composed of three members. The Governor serves as the ex-officio member of the board of directors. Two members of the board of directors must be private citizens, "independent members."

(2) An independent member of the board of directors:

(A) must be older than 18 years of age and have at least seven years executive or board experience in banking, accounting, and/or finance;

(B) must not be a current officer, employee or director of any governmental entity of the Virgin Islands and must be at least three years removed from having served as an officer, employee or director of any governmental entity of the Virgin Islands; and

(C) need not be a resident of the Virgin Islands,

(3) A quorum consists of two members, one of whom must be the Governor. Any one or more directors may participate in a meeting of the board of directors by means of a conference telephone, video, or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time and allowing for the verification of the identity of each of the directors. Participation by such means constitutes presence in person at a meeting.

(4) Actions of the board of directors are determined by a majority vote of the members, unless a unanimous vote of all the members is required by the by-laws of the Corporation for certain purposes; but the affirmative vote of both of the independent members is required for the issuance of the Initial Matching Fund Securitization Bonds, and the affirmative vote of both a majority of the independent members and the Governor is required for the issuance of any Additional Bonds.

(5) The two independent members of the board of directors must be appointed by the Governor within 30 calendar days after the effective date of this chapter. Any vacancy by either of the two independent directors appointed by the Governor must be filled by the Governor not more than 90 days after the date of the vacancy. At any time after the issuance of the Initial Matching Fund Securitization Bonds, the board of directors shall increase the size of the board of directors to five members, and the two additional directors must be independent and be nominated by the Governor and confirmed by the Legislature. Any vacancy of either of the additional independent directors must be filled by the Governor not later than 90 days after the date of the vacancy. Each of the independent members of the board of directors serves a four-year term, except that an independent member selected to fill a vacancy occurring before the end of the term for which his predecessor was selected may only serve until the end of the term. A director serves after the expiration of his term until his successor has taken office. Any director that has not been removed from the board of directors pursuant to paragraph (7) may be reappointed at any time.

(6) The independent directors may receive compensation not in excess of \$150 per each day or part of a day spent in the meeting of the board of directors, and all directors may receive, or be reimbursed for, the actual, reasonable, and necessary expenses incurred in the performance of their official duties.

(7) The Governor may remove any director for inefficiency, neglect of duty or misconduct in office after giving him a copy of the charges against him and an opportunity to be heard, in person or by counsel, in his defense, upon not less than ten days' notice. If any director is so removed, the Governor shall file in the Office of the Lieutenant Governor a complete statement of the charges made against the director and his findings, together with a complete record of the proceedings.

(8) Each director has a fiduciary duty to act in the best interests of the Corporation, including its creditors, the Bondholders, and shall perform other duties as may be specified in the organizational documents or other agreements of the Corporation.

(g) All assets and income of the Corporation are exempt from Virgin Islands taxation.

(h) The Corporation has the same fiscal year as the Government.

(i) An independent accountant, appointed by the board of directors of the Corporation, shall conduct an annual audit of the accounts and records of the Corporation.

(j) No Virgin Islands laws, rules, or orders governing procurement or administrative procedures, or personnel apply to the Corporation, its activities, board members, officers, or employees, except as otherwise provided for in this chapter.

(k) All operating and administrative expenses of the Corporation necessary for the proper business of the Corporation and budgeted at the time of the issuance of the Bonds or in any successive year and the costs of issuance and marketing of the Bonds must be paid by the Corporation out of the proceeds of the Bonds and the Matching Fund Receipts.

§ 1405. Bonds of the Corporation

(a) Subject to section 1404(c)(5) and section 1409, the Corporation has the power to issue Bonds in one or more series and/or tranches and at one or more times, including refunding Bonds at or before maturity, and the obligations are payable solely from the Trust Estate, and the Corporation has the power to provide for the authorization, securing, sale, and issuance of the Bonds and the Residual Certificate consistent with this chapter. The Corporation has the power to pledge the Trust Estate as security for the payment of all amounts payable under the Indenture, any supplemental indenture, and other indentures.

(b) The Corporation shall enter into an agreement with one or more underwriters or purchasers to sell the Initial Matching Fund Securitization Bonds in compliance with the Resolution, setting forth the principal amount of the Initial Matching Fund Securitization Bonds to be issued, the pricing and the proceeds expected from the issuance.

(c) A Resolution must authorize and describe the terms of the Initial Matching Fund Securitization Bonds to be issued to finance the Corporation's acquisition of the Matching Fund Receipts and the Related Rights only if the board of directors determines and states in the Resolution that the issuance of the Initial Matching Fund Securitization Bonds and the Residual Certificate is expected to ultimately result in increased receipts to the Government on a net present value basis by way of the Residual Certificate as compared to the residual receipts that would have been expected to be available to the Government had the Existing Matching Fund Loan Notes and Existing PFA Bonds remained outstanding by taking advantage of the Corporation's expected lower borrowing costs when compared to the borrowing costs of the Government. For each fiscal year, the annual debt service of the Initial Matching Fund Securitization Bonds may not exceed the annual debt service that would have been paid on the Existing PFA Bonds.

(d) The Corporation, by Resolution of its board of directors, may authorize the issuance of one or more series of Bonds. The Resolution may stipulate the terms of the Bonds, including the following:

- (1) Whether the Bonds will be issued as Matching Fund Securitization Bonds or as Subordinate Lien Bonds;
- (2) The date a Bond bears;
- (3) The date a Bond matures and, if different, the other date on which a Bond may be paid;

- (4) Whether the Bonds are issued as current interest bonds, capital appreciation bonds, convertible, capital, appreciation bonds or a combination thereof;
 - (5) Whether the Bonds are issued as serial bonds, term bonds or as a combination of the two;
 - (6) The denominations;
 - (7) The interest rate or rates, to be payable semi-annually, all as provided in or determined pursuant to, authorization under the Resolution;
 - (8) The method and terms of sale;
 - (9) The method for payment;
 - (10) Security for the Bonds;
 - (11) The terms of redemption;
 - (12) The establishment of debt service funds and the use of proceeds of the Bonds for costs of issuance, capitalized interest and otherwise in accordance with this chapter;
 - (13) The terms of any ancillary agreements to be entered into in connection with the issuance of such Bonds;
 - (14) The identity of the Trustee and other financing entities in connection with the issuance of the Bonds;
 - (15) Whether the Corporation will seek a rating on the Bonds and whether the Bonds may be insured; and
 - (16) Any other terms that, in the opinion of the board of directors or its advisors, may be necessary or appropriate for the sale of the Bonds.
- (e) The Resolution authorizing the issuance of the Bonds must include a statement as to whether a series of the Bonds is intended to be issued on a federally tax-exempt or taxable basis.
- (f) The Resolution authorizing the issuance of the Bonds must include a description of the use of the proceeds from the sale of the Bonds and provide for the payment of any closing financing costs and ongoing financing costs.
- (g) Each Resolution must be irrevocable but may be amended on or after the date of issuance of the Bonds approved thereunder only in accordance with and subject to the limitations of the Indenture. The Resolution must remain in effect and unabated until the Bonds authorized by the Resolution have been paid in full and all amounts required to be paid to any financing entity are paid in full and all obligations thereunder have been performed in full.

(h) The board of directors may delegate to the Governor the authority to prescribe the terms and conditions of each series of Bonds, including those referred to in subsection (d), except that the terms and conditions of the Residual Certificate issued in connection with the purchase of the Matching Fund Receipts and the Related Rights must be consistent with the terms of the Sale Agreement.

(i) The Bonds shall, automatically upon issuance, be secured by a statutory lien on the Trust Estate. The Matching Fund Securitization Bonds and any Subordinate Lien Bonds shall have the benefit of, and be secured by, a statutory lien upon the Trust Estate, which statutory lien must be effective, binding, and enforceable against creditors and all others asserting rights therein or having claims of any kind in tort, contract, or otherwise, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing or further act of any kind. The statutory lien arises by operation of law pursuant to this subsection and automatically attaches to the Trust Estate from the time the Bonds are issued, without further action, filing or authorization by the Corporation or any other entity, person, governmental authority, or officer. The statutory lien on amounts constituting Residual Receipts is automatically released and discharged immediately upon deposit by the Trustee of the amounts of Residual Receipts into the Residual Fund without further action, filing or authorization by the Corporation or any other entity, person, governmental authority, or officer.

(j) Any pledge by the Corporation of the Trust Estate as security for the Matching Fund Securitization Bonds has the benefit of a consensual lien, perfected, effective, binding, and enforceable against creditors and all others asserting rights therein or having claims of any kind in tort, contract, or otherwise, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing or further act of any kind. The consensual lien on amounts constituting Residual Receipts is automatically released and discharged immediately upon any deposit by the Trustee of the Residual Receipts into the Residual Fund without further action, filing or authorization by the Corporation or any other entity, person, governmental authority, or officer.

(k) The Bonds are securities in which all public officers and bodies of the Government and all agencies, instrumentalities, commissions, authorities, and political subdivisions thereof, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, and all other persons whatsoever who are now or may hereafter be authorized to invest in Bonds or other obligations of the Corporation, may properly and legally invest funds including capital in their control or belonging to them.

(l) The Bonds are securities that may be deposited with and are received by all public officers and bodies of the Government and all agencies, instrumentalities, commissions, authorities, and political subdivisions thereof, for any purpose for which the deposit of Bonds or other obligations of the Corporation is now or may hereafter be authorized.

(m) The Bonds are obligations of the Corporation.

(1) The Bonds, obligations of the Corporation under the ancillary agreements or other contracts, expenditures, accounts, funds, property and facilities of the Corporation are those of the Corporation and not those of the Government, or any department, office, agency, commission, municipality, branch, bureau, agent, officer or employee of the Government.

(2) The Bonds are not obligations of the Government and are not secured by a pledge of the full faith and credit of the Government and the Bondholders may not require the levy or imposition of taxes. Neither the full faith and credit nor the taxing power of the Virgin Islands is pledged to the payment of the principal of, or interest on, the Bonds.

(3) The Bonds and the Residual Certificate are special obligations of the Corporation payable solely from and secured by the Trust Estate.

(4) The Corporation has no taxing power.

(5) The Bonds must contain on their face the statements contained in paragraphs (1) through (4) of this subsection.

(6) Nothing contained in the Bonds or in the related financing or closing documents creates an obligation on the part of the Corporation or the Government to make payments with respect to the Matching Fund Securitization Bonds, the Subordinate Lien Bonds, or the Residual Certificate from sources other than the assets of the Corporation.

(n) The issuance of the Bonds, the authority to issue the Bonds, the regularity thereof, the validity of any pledge or lien, and the validity and legality of each Resolution authorizing the Bonds and the proceedings so adopted are conclusively presumed.

(l) No official, employee, or agent of the Corporation or the Government is personally liable solely because the Matching Fund Securitization Bonds are issued. Members of the board of directors, while acting within the scope of their authority as directors of the Corporation, are not subject to any personal or civil liability from the exercise of any of the Corporation's purposes, duties or responsibilities, unless the conduct of the director is determined by a court of competent jurisdiction to constitute willful wrongdoing or gross negligence.

(m) The signature of an officer of the Corporation that appears on the Bonds, including Matching Fund Securitization Bonds, not yet issued, or delivered, whether manual or facsimile, remains valid and sufficient notwithstanding that the person has ceased to hold that office.

(n) The Bonds are exempt as to principal and interest from taxation by the Government or by any political subdivision of the Government.

§ 1406. Term of Corporation; No Bankruptcy

(a) The existence of the Corporation is perpetual; but the board of directors by majority vote, including all of the independent members, may dissolve the Corporation no earlier than one year and one day after the Bonds, and all other obligations of the Corporation under the applicable indenture and the ancillary agreements have been repaid or their repayment has been provided for

fully, and the existence of the Corporation terminates when adequate provision has been made for the payment of all other debts and obligations, and the winding up of the affairs of the Corporation. No assets or earnings of the Corporation inures to a private person or entity. Upon dissolution of the Corporation, title to all property of the Corporation is vested in and becomes the property of the Government.

(b) The Corporation may not be a debtor under any provision of the United States Bankruptcy Code or under any other bankruptcy or similar law, and neither any public officer nor any organization, entity or other person shall authorize the Corporation to be or become a debtor under any provision of the United States Bankruptcy Code or under any other bankruptcy or similar law. Until the date not earlier than one year and one day after the Bonds and all other obligations under the Indentures and ancillary agreements are paid in full:

(1) The Corporation may not dissolve or file a voluntary petition under any bankruptcy legislation in effect from time to time or sell all, or substantially all, of its assets;

(2) No public officer, organization, entity, or other person is empowered to authorize the Corporation to be or become a debtor under any bankruptcy legislation in effect from time to time; and

(3) The Corporation may not take any action that materially and adversely affects the rights of the Bondholders or other obligations issued by it.

§ 1407. Sale of Matching Fund Receipts and Related Rights

(a) The transfer of the Government's right, title, and interest in and to the Matching Fund Receipts and the Related Rights pursuant to this chapter to the Corporation or any assignee permitted under the Indenture must be treated as an absolute transfer and true sale of all of the Government's right, title, and interest in and to the Matching Fund Receipts designated as being sold pursuant to the terms of the Sale Agreement, and not a pledge of or secured transaction relating to the Government's right, title, and interest in the Matching Fund Receipts and the Related Rights, if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer.

(b) The sale and conveyance of the Matching Fund Receipts and the Related Rights pursuant to this chapter must occur only when all of the following have occurred:

(1) The Corporation has adopted a Resolution;

(2) The documents evidencing the sale and conveyance of the Matching Fund Receipts and the Related Rights pursuant to this chapter have been executed and delivered to the Corporation;

(3) The Government has received the purchase price required for the rights to the Matching Fund Receipts and the Related Rights set forth in section 1403(a); and

(4) The U.S. Treasury has provided the written acknowledgment as contemplated in section 1403(a), and the Governor on behalf of the Government has

delivered an irrevocable letter of instruction to the Secretary and the DOI as contemplated in section 1403(h).

(c) The existence of a statutory lien and consensual liens on all of the Corporation's right, title, and interest in and to the Trust Estate, including the moneys payable or received thereunder and any interest thereon, or the characterization of the transaction for accounting or securities regulation purposes may not impair or negate the characterization of any transfer as a true sale. The transfer of the Government's right, title and interest in and to the Matching Fund Receipts and the Related Rights to the Corporation or to any assignee pursuant to the Sale Agreement must be irrevocable and must be perfected, vested, valid and binding as against third persons having claims of any kind in tort, contract or otherwise against the Government, irrespective of whether the parties have notice thereof and are superior to any judicial liens or other liens obtained by the claimants or transferees. No instrument by which the sale is accomplished need be recorded in order to accomplish the transfer.

(d) The Legislature by this chapter is determining the nature of, and procedure for the absolute conveyance of, property rights. The characterization of the assignment, sale and transfer of the Matching Fund Receipts and the Related Rights as an absolute transfer and true sale and the corresponding characterization of the property interest of the Corporation under this chapter may not be altered, adversely affected or impaired by, among other things, the occurrence of any of the following factors:

- (1) the commingling of the Matching Fund Receipts with other funds;
- (2) the initial retention by the Government of interest in the Residual Receipts in the Trust Estate as part of the consideration for the sale of the Matching Fund Receipts and the Related Rights;
- (3) any recourse that the Corporation may have against the Government pursuant to the Sale Agreement;
- (4) any indemnification or other obligations of the Government in favor of the Corporation;
- (5) the treatment of the sale, assignment or transfer for tax, financial reporting, or other purposes;
- (6) any subsequent Resolution of the Corporation; or
- (7) any deposit of Matching Fund Receipts in a separate fund in the Virgin Islands treasury referred to in 26 USC §7652(b)(3) despite the instruction by the Government to the Secretary of the Treasury or otherwise.

(e) The sale and conveyance of the Matching Fund Receipts and the Related Rights pursuant to this chapter may not be subject to disavowal, disaffirmance, cancellation, or avoidance by reason of insolvency of any party, lack of consideration, or any other fact, occurrence, or Virgin Islands law, the United States Code or other law or rule. On and after the effective date of the sale and conveyance of the Matching Fund Receipts and the Related Rights pursuant to this chapter,

the Government has no right, title, or interest in or to the Matching Fund Receipts and the Related Rights conveyed, and the Matching Fund Receipts and the Related Rights so conveyed are the property of the Corporation.

(1) The sale and conveyance of the Matching Fund Receipts pursuant to this chapter are exempt from all taxes and similar charges imposed by the Virgin Islands or any instrumentality of the Virgin Islands.

§ 1408. Government Pledge

(a) The Government pledges to and agrees with the Corporation for the Corporation and for the benefit of the Bondholders that, until at least one year and one day after the Bonds and all other obligations of the Corporation pursuant to the Indenture, other than the Residual Certificate, have been paid or defeased and all unpaid closing financing costs or ongoing financing costs have been paid, the Government shall:

(1) take all steps necessary or appropriate to provide, on a timely basis for each fiscal year;

(i) to the DOI with a copy to the Corporation, an estimate of the amount of rum produced in the Virgin Island and exported to the United States in such year, and

(ii) to the Corporation, any information required to make a request for any adjustment to the Matching Fund Receipts for such year;

(2) take all steps necessary or appropriate to ensure the Corporation's receipt and continued collection of the Matching Fund Receipts and payment thereof directly into the GVI Restricted Account and the prompt transfer of such Matching Fund Receipts to the deposit account;

(3) not divert, reclaim, sequester, commandeer, or use any Matching Fund Receipts transferred to the Corporation or deposited in the GVI Restricted Account; and

(4) (i) not close the GVI Restricted Account, and (ii) not take or permit any other action to be taken that reduces, postpones, limits, alters, or impairs the value of or collections on the Trust Estate or the rights and powers vested in the Corporation and in Bondholders.

(b) The Government further pledges to take all actions as may be permitted by law fully to preserve, maintain, defend, protect and confirm the interests of the Corporation, the pledge, lien and security interest and all rights of the Bondholders in the Trust Estate, and the payments therefrom pursuant to the terms of the Sale Agreement against all claims and demands of third parties, and shall not revoke, terminate or amend such pledge, lien and security interest in any way that would adversely affect the rights of any Bondholder.

(c) Without limiting the foregoing, the Government pledges to the Corporation and the Bondholders that, until at least one year and one day after the Bonds and all other obligations of

the Corporation pursuant to the Indenture have been paid or defeased and all unpaid closing costs or ongoing financing costs have been paid, the Government shall not:

(1) take any action that would, directly or indirectly, result in the repeal, rescission, or termination of this chapter, or

(2) enact any law permitting or authorizing the Corporation, or allow any public officer or any organization, entity or other person to permit or authorize the Corporation, to be a debtor under any bankruptcy or similar law.

(d) The Corporation may include these pledges and agreements of the Government in the Indenture or other indenture, any offering materials, marketing materials, or any ancillary agreement.

(e) In no way shall the pledges and agreements of the Government be interpreted to indicate that the Government is a guarantor of any debt or obligation of the Corporation.

§ 1409. Further Actions

The Governor shall negotiate and may execute the amendments or adjustments to existing agreements with Cruzan and Diageo and any ancillary agreements relating to the Initial Matching Fund Securitization Bonds as are necessary and appropriate to carry out the transactions contemplated by this chapter, subject to ratification by the Legislature.

§ 1410. Choice of Law

The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the sale and conveyance of the Matching Fund Receipts and the Related Rights pursuant to this chapter or the creation of a security interest in, or lien on, the Trust Estate are the laws of the Virgin Islands.

§ 1411. Conflict of Laws

If there is a conflict between this chapter and any other law regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any pledge of, security interest in or transfer of the Trust Estate, this chapter governs to the extent of the conflict. Notwithstanding any provisions of law to the contrary, no approvals, notices, authorizations or filings other than those specified in this chapter are required with respect to any Resolution or the transactions and contracts authorized in or contemplated by this chapter or any Resolution, including but not limited to the issuance of the Bonds and the Residual Certificate, the sale and conveyance of the Matching Fund Receipts and the Related Rights, the creation and perfection of the statutory lien or any consensual lien on the Trust Estate, the entering into or performance of any ancillary agreements, and the incurring of any expenses to facilitate the taking of the actions described in this chapter.

§ 1412. Invalidity

(a) Effective on the date that any Bonds are first issued, if any provision of this chapter is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that

occurrence does not affect any action allowed under this chapter that is taken by the Government, the Public Finance Authority, the Corporation, any financing entity, a Bondholder or a party to an ancillary agreement prior to the provision being held to be invalid, or being invalidated, superseded, replaced, repealed or expired, and any such action remains in full force and effect.

(b) If a provision of this chapter or its application to a person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provisions. It is the intent of the Legislature that this chapter would have been enacted even if the invalid provisions had not been included.

§ 1413. Money Bill; No Appropriation Required

This chapter is a money bill of the Legislature for the purposes of 48 USC §1561 and there is no requirement under statutory or other provisions of Virgin Islands law that the Legislature enact further legislation to appropriate any funds to the Corporation or to implement the provisions of this chapter presently or in the future.”

SECTION 3. All actions taken pursuant to Act Nos 8329 and 8330 prior to the date hereof (other than the creation of the special purpose vehicle pursuant to Act No 8329) are hereby approved and ratified notwithstanding the repeal of Act Nos 8329 and 8330.

SECTION 4. The true interest cost on the Initial Matching Fund Securitization Bonds shall not exceed 4.50% per annum.

SECTION 5. Pursuant to 29 V.I.C. § 1409, the Legislature hereby ratifies the following agreements:

(1) The Amendments dated September 11, 2020 (the “Cruzan Amendments”), amending the Agreement between Cruzan VIRIL, Ltd. and the Government of the United States Virgin Islands, dated as of October 6, 2009 (as amended from time to time, the “Cruzan Agreement”);

(2) The Amendment dated December 4, 2020, between Cruzan VIRIL, Ltd. and the Government of the United States Virgin Islands, further amending the Cruzan Amendments;

(3) The Amendments dated September 11, 2020, (the “Diageo Amendments”) amending the Agreement between Diageo USVI, Inc. and the Government of the United States Virgin Islands, dated as of June 17, 2008 (as amended and supplemented from time to time, the “Diageo Agreement”); and

(4) The Amendment dated November 30, 2020, between Diageo USVI, Inc. and the Government of the United States Virgin Islands, further amending the Diageo Amendments.

Thus passed by the Legislature of the Virgin Islands on _____, 2020.

Witness our Hands and Seal of the Legislature of the Virgin Islands this ____ day of _____, A.D., 2020.