



**THE UNITED STATES VIRGIN ISLANDS**  
OFFICE OF THE GOVERNOR  
GOVERNMENT HOUSE  
**Charlotte Amalie, V.I. 00802**  
**340-774-0001**

December 28, 2021

**VIA HAND DELIVERY**

The Honorable Donna M. Frett-Gregory  
Senate President  
Thirty-Fourth Legislature of the Virgin Islands  
Capitol Building  
St. Thomas, Virgin Islands 00802

**Re: Proposed Refinancing Legislation Amending Title 29 V.I.C. Chapter 24**

Dear Senate President Frett-Gregory:

It gives me great pleasure to submit to the Thirty-Fourth Legislature, legislation, proposed substitute legislation which represents the culmination of our collaborative efforts to resolve the long-pending issue of the solvency of the Government Employees Retirement System (“GERS”) and to restore the worthiness of working for and retiring from Government employment.

GERS is nearing insolvency and the GERS actuary has projected the GERS will be insolvent by October 2024 or sooner. The Board of Trustees warns that the insolvency of the GERS will necessitate substantial reductions in retiree benefits. Should the GERS become insolvent, retirement payments to retirees will be the responsibility of the Government of the Virgin Islands (the “Government”), placing significant new funding burdens on the General Fund of the Government. Further, pension liabilities cannot be materially restructured without modifications to retiree benefits.

As discussed by and between members and officials of both branches the Executive and Legislative branches of Government, we must come together to find an immediate solution to address the GERS’ impending insolvency. I truly believe we have done so and I present to you a proposed 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” and creating, as of the date hereof, a new entity named the “Matching Fund Special Purpose Securitization Corporation” (the “Corporation”) to: (1) acquire during the Transfer Period (a) 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 and (b) the Related Rights, (2) allow for the restructuring of the outstanding Matching Fund Bonds issued by the PFA in order to free up

resources to be applied to the restoration of solvency to GERS, (3) 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 (4) direct the Secretary and the United States Department of Interior to pay the Matching Fund Receipts directly into the Deposit Account; to approve the issuance by the Virgin Islands Public Finance Authority or other entity of a bond to the Government for deposit as an in-kind contribution to the GERS; 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. This legislation incorporates our unified efforts to bring relief to the GERS and peace of mind to the retirees and Government employees who rely on and will soon rely on our pension system for their livelihoods.

The legislation has been developed in collaboration with the members of the Senate's Subcommittee on GERS, as well as consultation with GERS and its actuary, and represents a real opportunity for us all to move past the perpetual fears of what might come next should the long-predicted GERS insolvency become a reality. It is my hope that the Legislative branch, Executive branch and GERS can collaboratively and cooperatively work on this matter to benefit the Retirement System and the overall economic life of the People of the Virgin Islands and its Government. The Transaction to be authorized by the legislation enables the opportunity to increase revenues that can be dedicated to the GERS through the issuance of a GERS Bond by the Virgin Islands Public Finance Authority ("PFA") or other entity as an in-kind contribution to the GERS.

The GERS actuary, Segal and Company, has determined that so long as the Matching Fund Receipts remain, at least, at their current levels, the foregoing proposed issuance of the GERS Bond to the Government and deposit of it with the GERS would provide financial stability and liquidity to the GERS and avoid reductions of retiree benefits.

As with previously proposed transactions, the use and pledging of the Matching Fund Receipts from the United States Treasury will be used as the financial base for the transaction. Upon the payment in full of all of the Bonds, in accordance with their terms, and all obligations under all applicable Indentures and the Ancillary Agreements, the Government and/or the PFA shall assume control of the Matching Fund Receipts, subject to any liens on the Residual Certificate and the Residual Receipts (as such terms are hereinafter defined in the legislation).

I respectfully ask the Thirty-Fourth Legislature to take up consideration of this matter as expeditiously as possible. I will make all necessary financial, investment and legal advisory persons available for presenting and explaining the legislation and the Transaction to the Legislature.

With appreciation for the efforts we jointly wish to foresee for the betterment of the People of the Territory.

Sincerely,

A handwritten signature in blue ink, appearing to read "Albert Bryan Jr.", with a long horizontal flourish extending to the right.

Albert Bryan Jr.  
Governor

*Enclosures*

# BILL NO. 34-\_\_\_\_\_

## THIRTY-FOURTH LEGISLATURE OF THE VIRGIN ISLANDS

2021

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 Special Purpose Securitization Corporation" (the "Corporation") to: (1) acquire during the Transfer Period (a) 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 and (b) 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 the issuance by the Virgin Islands Public Finance Authority or other entity of a bond to the Government for deposit as an in-kind contribution to the GERS; 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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### PROPOSED BY: THE GOVERNOR

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1           **WHEREAS**, the Government Employees' Retirement System of the Virgin Islands (the  
2 "GERS") is nearing insolvency, with the GERS actuary having projected that the GERS will be  
3 insolvent by October 2024;

4           **WHEREAS**, the Board of Trustees of the GERS has repeatedly indicated that the  
5 insolvency of the GERS will necessitate substantial reductions in retiree benefits;

6           **WHEREAS**, in the event that the GERS becomes insolvent, retirement payments to  
7 retirees not made by the GERS will be the responsibility of the Government of the Virgin Islands  
8 (the "Government"), placing significant new funding burdens on the general fund of the  
9 Government;

10           **WHEREAS**, the GERS pension obligations are the largest liabilities of the Government,  
11 totaling approximately \$5.78 billion as of October 1, 2020, in contrast to the outstanding principal  
12 amount of the Government's portion of the Existing PFA Bonds (as hereinafter defined) of  
13 approximately \$657.8 million and the Government's gross receipts taxes bonds/notes of  
14 approximately \$559.9 million;

15           **WHEREAS**, while the timing of repayment of bond indebtedness can be restructured  
16 through the redemption and restructuring of such bonds, pension liabilities cannot be materially  
17 restructured without modifications to retiree benefits;

1           **WHEREAS**, the Transaction (as hereinafter defined) allows the opportunity to increase  
2 revenues that can be dedicated to the GERS through the issuance by the Virgin Islands Public  
3 Finance Authority (“PFA”) or other entity of the GERS Bond (as hereinafter defined) to the  
4 Government for deposit as an in-kind contribution to the GERS;

5           **WHEREAS**, the GERS actuary has indicated to the GERS and the Government that so  
6 long as the Matching Fund Receipts (as hereinafter defined) remain at least at their Fiscal Year (as  
7 hereinafter defined) 2021 levels, the foregoing proposed issuance of the GERS Bond to the  
8 Government and deposit of it with the GERS would provide financial stability and liquidity to the  
9 GERS;

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

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

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

21           **WHEREAS**, to provide the financial stability and liquidity to the GERS described above,  
22 the Legislature has determined that the Matching Fund Receipts from the United States Treasury  
23 can be more efficiently used by creating a new special purpose vehicle to serve as an independent  
24 and autonomous public corporation and governmental instrumentality whose purpose would be to  
25 acquire all of the Government’s rights, title, and interest in and to the Matching Fund Receipts  
26 during the Transfer Period and the Related Rights (as hereinafter defined), to issue Bonds and the  
27 Residual Certificate (as such terms are hereinafter defined), in order to pay the purchase price  
28 therefor and as otherwise authorized, and to direct the Secretary of the U.S. Treasury and the  
29 United States Department of the Interior (the “DOI”) to pay the Matching Fund Receipts directly  
30 into the trust account established in the name of the Government, in trust for the sole benefit of the  
31 Corporation and the Corporation’s collateral assignee, the trustee for the Bonds (the “GVI  
32 Restricted Account”) (all such steps being collectively referred to as, the “Transaction”);

33           **WHEREAS**, the Legislature has determined that to fulfill the objectives of the Transaction,  
34 it is necessary (1) for the Government to apply the proceeds it receives from the sale of the Matching  
35 Fund Receipts to prepay the Existing Matching Fund Loan Notes (as hereinafter defined) in order  
36 for the PFA to refund, redeem, pay and defease all of its Existing PFA Bonds, and (2) as additional  
37 consideration for the sale of the Matching Fund Receipts and Related Rights, for the Corporation  
38 to deposit into the deposit account of the trustee for the GERS Bond (the “GERS Bond Trustee”)  
39 an amount sufficient to fund the GERS Bond Payment Obligations (as hereinafter defined);

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

4           **WHEREAS**, the Legislature acknowledges that providing for a statutory lien on the assets  
5 of the Corporation to secure the payment on the Bonds and on the Ancillary Agreements entered  
6 into in connection with the Transaction would serve the interests of the Government;

7           **WHEREAS**, the Legislature seeks to authorize the Government to assign, sell, transfer or  
8 otherwise convey its interest in the Matching Fund Receipts that are to be received from the U.S.  
9 Treasury and to provide the Related Rights to the Corporation for as long as the Bonds are  
10 outstanding;

11           **WHEREAS**, upon the payment in full of all of the Bonds in accordance with their terms,  
12 and all obligations under all applicable Indentures and the Ancillary Agreements, the Government  
13 and/or the PFA shall assume control of the Matching Fund Receipts, subject to any liens on the  
14 Residual Certificate and the Residual Receipts (as such terms are hereinafter defined);

15           **WHEREAS**, the Legislature seeks to authorize the Corporation to issue Bonds, the  
16 proceeds of which must be used (1) to purchase from the Government all of its rights, title and  
17 interest in and to the Matching Fund Receipts and the Related Rights and pay the related costs of  
18 the issuance of the Bonds, and (2) as additional consideration for the purchase of the Matching  
19 Fund Bonds and Related Rights, to deposit into the deposit account of the GERS Bond Trustee  
20 an amount sufficient to fund the GERS Bond Payment Obligations;

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

27           **WHEREAS**, in addition to the cash purchase price for the Matching Fund Receipts and  
28 the Related Rights, the Government is to receive (i) a Residual Certificate, pursuant to which the  
29 Government will have rights to the portion of the Matching Fund Receipts deposited by the U.S.  
30 Treasury into the GVI Restricted Account and then transferred into the deposit account of the  
31 Corporation and which remain after the Corporation pays the debt service and expenses in  
32 connection with the Bonds and other obligations (collectively, "Debt Service"), and (ii) the GERS  
33 Bond for deposit as an in-kind contribution to the GERS, which indebtedness shall be secured by  
34 a portion of the Residual Receipts received by the Government pursuant to the Residual  
35 Certificate;

36           **WHEREAS**, the Corporation shall use the Matching Fund Receipts so transferred into its  
37 deposit account to pay Debt Service;

38           **WHEREAS**, the Legislature acknowledges that providing for a statutory lien on the  
39 Residual Receipts of the Government to secure the payment on the GERS Bond would serve the  
40 interests of the Government and the GERS; and

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

4           **NOW, THEREFORE,**

5           *Be it enacted by the Legislature of the Virgin Islands:*

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

9           **SECTION 2.** Title 29 Virgin Islands Code is amended by inserting a Chapter 24 to read  
10 as follows:

11           **“Chapter 24. The Matching Fund Special Purpose Securitization Corporation**

12           **§ 1401. Short Title**

13           This Chapter may be cited as “The Matching Fund Special Purpose Securitization Act  
14 of 2021.”

15           **§ 1402. Definitions**

16           For the purposes of this Chapter, the following terms have the meanings set forth in this  
17 Section:

18           (a)       “Additional Bonds” means one or more additional series and/or tranches of  
19 Bonds issued pursuant to the Indenture or another indenture after the Initial Matching Fund  
20 Securitization Bonds are issued which are all secured by the Trust Estate.

21           (b)       “Ancillary Agreements” means the Sale Agreement, the initial Indenture,  
22 any supplemental Indentures, other Indentures, the bond purchase agreement between the  
23 Corporation and the initial bond purchasers, security enhancement agreements (if any),  
24 investment agreements, or any other agreement or instrument entered into by the  
25 Corporation, the Government, or the Trustee in connection with, or in furtherance of, the  
26 sale and conveyance of the Matching Fund Receipts and the Related Rights pursuant to  
27 this Chapter and the issuance of the Bonds.

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

29           (d)       “Bonds” means the Matching Fund Securitization Bonds and the  
30 Subordinate Lien Bonds issued pursuant to the initial Indenture or other Indentures.

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

1 (f) "Corporation" means Matching Fund Special Purpose Securitization  
2 Corporation established by Section 1404.

3 (g) "Cut-Off Date" means [November 1, 2021].

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

9 (i) "DOI" means the United States Department of the Interior.

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

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

24 (l) "Financing costs" means all costs associated with the following:

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

27 (2) the making of payments required by the Ancillary Agreements;

28 (3) the preparation for and the entering into the transactions authorized  
29 by this Chapter, including, but not limited to, any reasonable legal and financial  
30 advisory fees incurred by the Legislature, the Government, the PFA and the  
31 Corporation;

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

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



1 (6) the performance of all ongoing activities relating to the Matching  
2 Fund Securitization Bonds, the Residual Certificate, the Subordinate Lien Bonds,  
3 the Matching Fund Receipts, any Ancillary Agreements, and the Trust Estate, and

4 (7) for the compensation and reasonable travel expenses, and other  
5 reasonable expenses of the directors of the Corporation.

6 (m) "Financing entity" means the Corporation, the Trustee and any other person  
7 or entity acting for the benefit of the Bondholders or the Corporation that has rights under  
8 any Ancillary Agreements.

9 (n) "Fiscal Year" means beginning October 1 through and including  
10 September 30 of the following calendar year.

11 (o) "GERS" means Government Employee Retirement System.

12 (p) "GERS Bond" means the bond or other form of indebtedness issued by PFA  
13 or other entity to the Government for deposit as an in-kind contribution to the GERS  
14 concurrently with the issuance of the Initial Matching Fund Securitization Bonds, which  
15 bond or other form of indebtedness shall be secured by a portion of the Residual Receipts  
16 received by the Government pursuant to the Residual Certificate.

17 (q) "GERS Bond Payment Obligations" means the funding and payment  
18 obligations relating to the GERS Bond that are due in Fiscal Year 2022 and any cost of  
19 issuance relating to the GERS Bond.

20 (r) "GERS Bond Trustee" means the trustee under the indenture pursuant to  
21 which the GERS Bond is issued.

22 (s) "Government" means the Government of the Virgin Islands.

23 (t) "Governor" means the Governor of the Virgin Islands or his designee as  
24 may be named from time to time.

25 (u) "GVI Restricted Account" means the trust account established in the name  
26 of the Government, in trust for the sole benefit of the Corporation and the Corporation's  
27 collateral assignee, the Trustee.

28 (v) "Indenture" means the master trust indenture, bond indenture, trust  
29 agreement or similar agreement between the Corporation and the Trustee, as amended or  
30 supplemented from time to time, from the date of the issuance of the Initial Matching Fund  
31 Securitization Bonds and the Residual Certificate.

32 (w) "Initial Matching Fund Securitization Bonds" means the initial series of  
33 Matching Fund Securitization Bonds issued pursuant to the initial Indenture.

34 (x) "Matching Fund Receipts" means the amounts paid and to be paid by the  
35 U.S. Treasury through the Secretary of the DOI as a transfer of federal excise taxes imposed

1 and collected under the Code in any Fiscal Year on rum produced in the Virgin Islands and  
2 exported to the United States and that is subject to federal excise tax pursuant to 26 USC  
3 §7652, as amended from time to time.

4 (y) "Matching Fund Securitization Bonds" means the Initial Matching Fund  
5 Securitization Bonds and any Additional Bonds issued on a parity therewith, which bonds  
6 may be issued as taxable or tax-exempt bonds, authorized to be issued by the Corporation  
7 from time to time pursuant to an Indenture. Neither the Residual Certificate nor any  
8 Subordinate Lien Bond is a Matching Fund Securitization Bond.

9 (z) "PFA Indenture" means any indenture under which the Existing PFA  
10 Bonds were issued.

11 (aa) "Public Finance Authority" or "PFA" means the Virgin Islands Public  
12 Finance Authority, a public corporation and governmental instrumentality of the  
13 Government.

14 (bb) "Related Rights" means the contractual rights provided by the Government,  
15 the covenants made by the Government, and the Corporation's rights to enforce the rights  
16 and covenants, all pursuant to the Act and the Sale Agreement.

17 (cc) "Residual Certificate" means a certificate issued by the Corporation  
18 evidencing the right of the holder to receive any Residual Receipts on deposit in the  
19 Residual Fund.

20 (dd) "Residual Certificate Holder" means the holder or holders of the Residual  
21 Certificate. Upon its issuance by the Corporation, the Residual Certificate Holder is the  
22 Government.

23 (ee) "Residual Fund" means the fund or account so designated, created and  
24 established pursuant to the initial Indenture into which the Residual Receipts are deposited.

25 (ff) "Residual Receipts" means that portion of the Matching Fund Receipts  
26 deposited in the Residual Fund, if any, after making the deposits required in each Fiscal  
27 Year for the following, in the order of priority provided in the initial Indenture:

28 (1) Payment of debt service on the Bonds;

29 (2) Establishing, maintaining, or replenishing any reserve funds created  
30 in connection with the issuance of the Bonds;

31 (3) Payment of any other obligations of the Corporation under any  
32 Ancillary Agreement; or

33 (4) Payment of the operating expenses of the Corporation.

34 (gg) "Resolution" means one or more resolutions by the board of directors of the  
35 Corporation, adopted in accordance with this Chapter, authorizing:

1 (1) the Corporation's purchase of the Matching Fund Receipts and the  
2 Related Rights;

3 (2) the issuance of one or more series of Bonds;

4 (3) any redemption, defeasance or refunding of Bonds, and

5 (4) the execution and delivery of any Indenture and any Ancillary  
6 Agreement.

7 (hh) "Sale Agreement" means an agreement between the Corporation and the  
8 Government that provides for the irrevocable transfer, pursuant to Section 1403 and the  
9 Resolution, during the Transfer Period, to the Corporation of all of the Government's right,  
10 title, and interest in and to the Matching Fund Receipts paid and to be paid by the U.S.  
11 Treasury to the Government, by depositing such amounts into the GVI Restricted Account  
12 and the Related Rights, in exchange for:

13 (1) a cash payment of the net proceeds from the sale of any Matching  
14 Fund Securitization Bonds and any Subordinate Lien Bonds;

15 (2) the deposit into the deposit account of the GERS Bond Trustee of  
16 an amount sufficient to fund the GERS Bond Payment Obligations; and

17 (3) the Residual Certificate.

18 (ii) "Secretary" means the Secretary of the U.S. Treasury.

19 (jj) "Settlement Agreement" means a written agreement or other document  
20 evidencing that the GERS shall, upon the issuance and delivery of the GERS Bond, release  
21 any and all pending claims and dismiss any and all pending litigation against the  
22 Government and that any pending or existing judgements against the Government shall be  
23 deemed satisfied.

24 (kk) "Subordinate Lien Bonds" means Bonds that may be issued by the  
25 Corporation from time to time after the issuance of the Initial Matching Fund Securitization  
26 Bonds pursuant to a Resolution and an Indenture, which Bonds are secured by a  
27 subordinate pledge on the Trust Estate.

28 (ll) "Transfer Period" means the period from and including the Cut-Off Date  
29 through and including the date on which the last outstanding Bond is paid or defeased and  
30 all obligations under all applicable Indentures and the Ancillary Agreements are paid in  
31 full.

32 (mm) "Trustee" means the bank or trust company appointed as "Trustee" for the  
33 Bonds pursuant to the applicable Indenture and having the duties, responsibilities and rights  
34 provided for in such Indenture, and its successor or successors and any other bank or trust  
35 company that may at any time be substituted in its place pursuant to such Indenture.

1 (nn) "Trust Estate" means the right, title, and interest in and to:

2 (1) the Corporation's interest in the funds in the GVI Restricted  
3 Account;

4 (2) during the Transfer Period, the Matching Fund Receipts paid and to  
5 be paid to the Corporation and the Related Rights;

6 (3) all earnings, interest, claims, credit enhancement payments, and  
7 proceeds of or arising from the Matching Fund Receipts and any adjustments to and  
8 from the Related Rights; and

9 (4) all rights of the Corporation under the Sale Agreement and all other  
10 Ancillary Agreements.

11 The Trust Estate shall not include any Residual Receipts.

12 (oo) "U.S. Treasury" means the United States Department of the Treasury.

13 (pp) "Virgin Islands" means the unincorporated territory of the United States of  
14 America as described in the Revised Organic Act of the Virgin Islands, 48 U.S.C. § 1541  
15 (a).

16 **§ 1403. Authority to Sell and Transfer the Matching Fund Receipts and Provide**  
17 **Related Rights**

18 (a) For the purposes of prepaying the Existing Matching Fund Loan Notes and  
19 the refunding, redemption, paying or defeasing by the PFA of all Existing PFA Bonds  
20 secured thereby, releasing the existing liens on the Matching Fund Receipts so that the  
21 Government may more efficiently leverage the value of the Matching Fund Receipts, the  
22 Government may sell to the Corporation all of the Government's right, title, and interest in  
23 and to the Matching Fund Receipts and the Related Rights and any earnings or interest  
24 payable to the Government during the Transfer Period at a purchase price equal to (i) the  
25 net proceeds it receives from the sale of the Initial Matching Fund Securitization Bonds  
26 less the costs associated with the sale, plus (ii) the deposit into the deposit account of the  
27 GERS Bond Trustee of an amount sufficient to fund the GERS Bond Payment Obligations,  
28 plus (iii) the Residual Certificate, plus (iv) the GERS Bond for deposit as an in-kind  
29 contribution to the GERS, which indebtedness shall be secured by a portion of the Residual  
30 Receipts received by the Government pursuant to the Residual Certificate;

31 (b) Prior to the sale, the U.S. Treasury shall first have acknowledged in writing  
32 that it will deposit Matching Fund Receipts directly into the GVI Restricted Account.

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

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

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

3 (1) the production of rum in the Virgin Islands;

4 (2) the sale and export of the rum exported from the Virgin Islands to  
5 the United States mainland;

6 (3) adjustments that may be made to the rate or amount of the Matching  
7 Fund Receipts to be paid by the U.S. Treasury; and

8 (4) the U.S. Treasury paying the Matching Fund Receipts directly into  
9 the GVI Restricted Account, as irrevocably directed by the Government.

10 (e) Subject to the authorization and restrictions of this Chapter, the Governor  
11 shall determine the terms and conditions of the Sale Agreement, which determination must  
12 be conclusively evidenced by his execution of the Sale Agreement. Once sold pursuant to  
13 the Sale Agreement and during the Transfer Period, the Matching Fund Receipts that would  
14 have been paid to the Government, and the Related Rights, regardless of location,  
15 completion of any transfer process, or whether deposited into the GVI Restricted Account,  
16 are no longer the property of the Government, and the Government has no right to obtain  
17 the return of the Matching Fund Receipts or to exercise and enjoy any of the Related Rights,  
18 except as agent for the Corporation or the Trustee, as the case may be. Once sold pursuant  
19 to the Sale Agreement and during the Transfer Period, only the Corporation or the Trustee  
20 may transfer Matching Fund Receipts from the GVI Restricted Account. But for so long  
21 as the Government is the Residual Certificate Holder, the Residual Receipts must be  
22 deposited in the Residual Fund in accordance with the initial Indenture.

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

33 (g) Upon the Public Finance Authority's receipt of the funds from the  
34 prepayment of the Existing Matching Fund Loan Notes by the Government, the Public  
35 Finance Authority shall be obligated to, and shall, use the amounts to cause all the Existing  
36 PFA Bonds to be redeemed or defeased in full and shall be obligated to, and shall, pay in  
37 full all other amounts outstanding under the applicable PFA Indentures and other  
38 documents related to the Existing PFA Bonds. In no event shall amounts paid to prepay  
39 the Existing Matching Fund Loan Notes be available or be applied for payment of the

1 Bonds, the Residual Certificate, any claim against the Corporation, or any debt or  
2 obligation of the Corporation.

3 (h) Beginning in September 2022 (or earlier, if requested by the DOI) and prior  
4 to end of each Fiscal Year thereafter until the Bonds are paid in full in accordance with  
5 their terms, the Government shall provide:

6 (1) an estimate of the amount of rum to be produced in the Virgin  
7 Islands and exported to the United States mainland for the ensuing Fiscal Year, on  
8 a timely basis to the DOI, with a copy to the Corporation; and

9 (2) any information required to make the request for any adjustments to  
10 the Matching Fund Receipts for such year to the Corporation.

11 (i) Prior to the issuance of the Initial Matching Fund Securitization Bonds, the  
12 Government shall deliver one or more agreements or instruments, including an irrevocable  
13 letter of instruction from the Governor directing the Secretary and the DOI to cause to be  
14 promptly transferred to the GVI Restricted Account any and all payments of the Matching  
15 Fund Receipts, including any transferred in error, during the Transfer Period.

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

22 (k) The Public Finance Authority shall (1) execute and deliver all documents  
23 and agreements and take all actions necessary or appropriate in connection with the  
24 redemption or defeasance in full of the Existing PFA Bonds and the payment in full of all  
25 other amounts outstanding under the applicable PFA Indentures and other documents  
26 related to the Existing PFA Bonds, and (2) execute and deliver all documents and  
27 agreements and take all actions necessary or appropriate in connection with the issuance  
28 of the GERS Bond.

29 (l) The Government shall cause a report of the final amount and disposition of  
30 the net proceeds from the sale of the Matching Fund Receipts and the Related Rights to be  
31 made to the Legislature of the Virgin Islands within 30 days after such sale.

32 (m) Upon the payment in full of all of the Bonds in accordance with their terms  
33 and all obligations under all applicable Indentures and the Ancillary Agreements, the  
34 Government and/or the PFA shall have the right to assume control of the Matching Fund  
35 Receipts, subject to any liens on the Residual Certificate and the Residual Receipts.

36 **§ 1404. The Corporation**

37 (a) The Matching Fund Special Purpose Securitization Corporation is  
38 established as a special purpose, independent and autonomous, public corporation and

1 governmental instrumentality of the Government of the Virgin Islands. The Corporation  
2 is intended, created, and empowered to effectuate the purposes stated in this Chapter. The  
3 Corporation has a legal existence separate from the Government. The debts, obligations,  
4 contracts, bonds, receipts, expenditures, accounts, funds, facilities and property of the  
5 Corporation are those of the Corporation and not those of the Government, or any office,  
6 bureau, department, agency, commission, branch, agent, office or employee of the  
7 Government. The Corporation is created as a not for profit, tax-exempt entity and is not  
8 created or organized, and its operations may not be conducted, for the purpose of making  
9 a profit.

10 (b) The purposes of the Corporation are to:

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

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

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

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

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

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

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

36 (4) by the earlier of the date requested by the U.S. Treasury or  
37 such other deadline provided by law, for each fiscal year during the Transfer  
38 Period, when appropriate, deliver to the DOI a written letter requesting any  
39 adjustment to the amounts based on actual federal excise taxes paid on rum

1 produced in the Virgin Islands and exported to the United States, with the  
2 adjustment to be applied to the amount of the Matching Fund Receipts paid to the  
3 Corporation in the ensuing year;

4 (5) if authorized in the future by the Legislature, issue Additional  
5 Bonds, including, but not limited to, Subordinated Lien Bonds, for purposes related  
6 to the Corporation as contemplated by a Resolution, and use the proceeds as  
7 contemplated in the related Indenture or supplemental indenture and pay any related  
8 closing costs and ongoing financing costs;

9 (6) issue the Residual Certificate as described in Section 1403(a); and

10 (7) provide the Corporation's annual audited financial statements to the  
11 Legislature as soon as practicable after receipt thereof from the auditor.

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

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

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

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

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

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

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

36 (6) Redeem, defease, or otherwise refund the Bonds in accordance with  
37 the terms of the applicable Indenture as long as the redemption, defeasance or



1 refunding does not, solely by such action, reduce the expected Residual Receipts to  
2 the Residual Certificate Holder on a net present value basis compared to the net  
3 Residual Receipts that would have been expected to be available to the Residual  
4 Certificate Holder had the Bonds remained outstanding unless the Residual  
5 Certificate Holder otherwise consents to such action;

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

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

17 (9) Make, execute, and perform contracts, commitments, agreements,  
18 Indentures, instruments and Ancillary Agreements, in connection with the issuance  
19 of, security for, or administration of, the Bonds and the Residual Certificate, as  
20 approved by its board of directors and as necessary or appropriate to accomplish  
21 the purposes of the Corporation and this Chapter;

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

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

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

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

32 (14) Invest any funds or other moneys under its custody and control in  
33 investment securities or under any Ancillary Agreement pursuant to the terms of  
34 the Indenture;

35 (15) Do all things necessary or appropriate to enforce its rights and  
36 require other parties to fulfill their obligations hereunder and under the Ancillary  
37 Agreements; and

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

3 (f) Board of Directors: The members of the board shall develop a policy of  
4 board governance that provides well-defined rules, processes and by-laws, such as  
5 documented procedures, routine internal audits, risk management and reporting required  
6 by this Act. It is the responsibility of the board of directors to build a framework for  
7 corporate governance that synchronizes with the rules of law, moral integrity, open  
8 participation and transparency, accountability, effectiveness and efficiency, and  
9 implements its legislative mandate.

10 (1) The Corporation is governed by a board of directors composed of  
11 five members. Four members of the board of directors must be private citizens who  
12 must be "Independent Member(s)," and two members of the board of directors shall  
13 be residents of the Virgin Islands for at least three consecutive years prior to  
14 appointment ("Public Members"). The Governor shall constitute a Public Member  
15 and serves as an ex-officio member and Chairman of the board of directors;

16 (2) Members of the board of directors:

17 (A) must be older than 25 years of age and have at least seven  
18 years executive or board experience in accounting, banking, finance, law,  
19 management and/or public administration;

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

24 (C) except for any Public Member that is an Independent  
25 Member, an "Independent Member" need not be a resident of the Virgin  
26 Islands;

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

34 (4) Actions of the board of directors are determined by a majority vote  
35 of the members, unless a unanimous vote of all the members is required by the  
36 bylaws of the Corporation for certain purposes; but the affirmative vote of two of  
37 the independent members is required for the issuance of the Initial Matching Fund  
38 Securitization Bonds, and the affirmative vote of both a majority of the independent  
39 members and the Governor is required for the issuance of any Additional Bonds,  
40 provided such Bonds have been previously authorized by the Legislature;

1 (5) The four members of the board of directors other than the Governor  
2 must be appointed by the Governor within 30 calendar days after the effective date  
3 of this Chapter, for a term of four years and shall not be subject to legislative  
4 confirmation;

5 (6) Any vacancy occurring after the initial appointments and prior to the  
6 issuance of the Initial Matching Fund Securitization Bonds, must be filled by the  
7 Governor within 30 days of the vacancy pursuant to paragraph 5 above;

8 (7) Each of the members of the board of directors serves a four-year  
9 term, except that a member selected to fill a vacancy occurring before the end of  
10 the term for which his/her predecessor was selected may only serve until the end of  
11 the term; a director serves after the expiration of his/her term until his/her successor  
12 has taken office. Any director in good standing may be reappointed by the  
13 Governor for another term;

14 (8) The members of the board of directors may receive compensation  
15 not in excess of \$1,500 per each day or part of a day spent in the meeting of the  
16 board of directors, and all directors may receive, or be reimbursed for, the actual,  
17 reasonable, and necessary expenses incurred in the performance of their official  
18 duties;

19 (9) The Governor may remove any director for inefficiency, neglect of  
20 duty or misconduct in office after giving him a copy of the charges against him and an  
21 opportunity to be heard, in person or by counsel, in his defense, upon not less than 'ten  
22 days' notice. If any director is so removed, the Governor shall file in the Office of the  
23 Lieutenant Governor a complete statement of the charges made against the director and  
24 his findings, together with a complete record of the proceedings. Any director removed  
25 from the board of directors pursuant to this paragraph shall not be reappointed at any  
26 time;

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

31 (11) All assets and income of the Corporation are exempt from Virgin  
32 Islands taxation;

33 (12) The Corporation has the same fiscal year as the Government;

34 (13) An independent certified public accountant, designated by the board  
35 of directors of the Corporation, shall conduct an annual audit of the accounts and  
36 records of the Corporation;

37 (14) No Virgin Islands laws, rules, or orders governing procurement or  
38 administrative procedures, or personnel apply to the Corporation, its activities,

1 board members, officers, or employees, except as otherwise provided for in this  
2 Chapter; and

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

## 8 § 1405. Bonds of the Corporation

9 (a) Subject to Section 1404(c)(5) and Section 1409, the Corporation shall have  
10 the power to issue Bonds in one or more series and/or tranches and at one or more times,  
11 including refunding Bonds at or before maturity, and the obligations are payable solely  
12 from the Trust Estate, and the Corporation has the power to provide for the authorization,  
13 securing, sale, and issuance of the Bonds and the Residual Certificate consistent with this  
14 Chapter. The Corporation has the power to pledge the Trust Estate as security for the  
15 payment of all amounts payable under the initial Indenture, any supplemental Indenture,  
16 and other Indentures.

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

22 (c) Any Bonds issued by the Corporation may be rated by any Nationally  
23 Recognized Statistical Rating Organization selected by the Corporation and, if so desired  
24 by the Corporation, may be insured with municipal bond insurance, if available and  
25 appropriate.

26 (d) A Resolution must authorize and describe the terms of the Initial Matching  
27 Fund Securitization Bonds to be issued to finance the Corporation's acquisition of the  
28 Matching Fund Receipts and the Related Rights only if the board of directors determines  
29 and states in the Resolution that the issuance of the Initial Matching Fund Securitization  
30 Bonds and the Residual Certificate is expected to ultimately result in increased receipts to  
31 the Government on a net present value basis (excluding the debt service reserve funds  
32 securing the Existing PFA Bonds) by way of the Residual Certificate as compared to the  
33 residual receipts that would have been expected to be available to the Government had the  
34 Existing Matching Fund Loan Notes and Existing PFA Bonds remained outstanding by  
35 taking advantage of the Corporation's expected lower borrowing cost.

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

39 (1) Whether the Bonds will be issued as Matching Fund Securitization  
40 Bonds or as Subordinate Lien Bonds;

- 1 (2) The date a Bond bears;
- 2 (3) The date a Bond matures and, if different, the other date on which a  
3 Bond may be paid;
- 4 (4) Whether the Bonds are issued as current interest bonds, capital  
5 appreciation bonds, convertible, capital, appreciation bonds or a combination  
6 thereof;
- 7 (5) Whether the Bonds are issued as serial bonds, term bonds  
8 or as a combination of the two;
- 9 (6) The denominations;
- 10 (7) The interest rate or rates, to be payable semi-annually, all as  
11 provided in or determined pursuant to, authorization under the Resolution;
- 12 (8) The method and terms of sale;
- 13 (9) The method for payment;
- 14 (10) Security for the Bonds;
- 15 (11) The terms of redemption;
- 16 (12) The establishment of debt service funds and the use of proceeds of  
17 the Bonds for costs of issuance, capitalized interest and otherwise in accordance  
18 with this Chapter;
- 19 (13) The terms of any Ancillary Agreements to be entered into in  
20 connection with the issuance of such Bonds;
- 21 (14) The identity of the Trustee and other financing entities in connection  
22 with the issuance of the Bonds;
- 23 (15) Whether the Corporation will seek a rating on the Bonds and  
24 whether the Bonds may be insured; and
- 25 (16) Any other terms that, in the opinion of the board of directors or its  
26 advisors, may be necessary or appropriate for the sale of the Bonds.
- 27 (f) The concurrent issuance of the GERS Bond secured by the Residual  
28 Certificate is a condition to the issuance of the Initial Matching Fund Securitization Bonds.
- 29 (g) The Resolution authorizing the issuance of the Bonds must include a  
30 statement as to whether a series of the Bonds is intended to be issued on a federally tax-  
31 exempt or taxable basis.

1 (h) The Resolution authorizing the issuance of the Bonds must include a  
2 description of the use of the proceeds from the sale of the Bonds and provide for the  
3 payment of any closing financing costs and ongoing financing costs.

4 (i) Each Resolution must be irrevocable but may be amended on or after the date  
5 of issuance of the Bonds approved thereunder only in accordance with and subject to the  
6 limitations of the applicable Indenture. The Resolution must remain in effect and unabated  
7 until the Bonds authorized by the Resolution have been paid in full and all amounts required  
8 to be paid to any financing entity are paid in full and all obligations thereunder have been  
9 performed in full.

10 (j) The board of directors may delegate to its chair the authority to prescribe  
11 the terms and conditions of each series of Bonds, including those referred to in subsection  
12 (e), provided that the terms and conditions of the Residual Certificate issued in connection  
13 with the purchase of the Matching Fund Receipts and the Related Rights must be consistent  
14 with the terms of the Sale Agreement.

15 (k) The Bonds shall, automatically upon issuance, be secured by a statutory lien  
16 on the Trust Estate. The Matching Fund Securitization Bonds and any Subordinate Lien Bonds  
17 shall have the benefit of, and be secured by, a statutory lien upon the Trust Estate, which  
18 statutory lien is effective, binding, and enforceable against creditors and all others asserting  
19 rights therein or having claims of any kind in tort, contract, or otherwise, irrespective of  
20 whether those parties have notice of the lien and without the need for any physical delivery,  
21 recordation, filing or further act of any kind. The statutory lien arises by operation of law  
22 pursuant to this subsection and automatically attaches to the Trust Estate from the time the  
23 Bonds are issued, without further action, filing or authorization by the Corporation or any  
24 other entity, person, governmental authority, or officer. As it relates to the Matching Fund  
25 Securitization Bonds and any Subordinate Lien Bonds, the statutory lien on Matching Fund  
26 Receipts that constitute Residual Receipts shall be automatically released and discharged  
27 immediately upon deposit by the Trustee of the amounts of Residual Receipts into the  
28 Residual Fund without further action, filing or authorization by the Corporation or any  
29 other entity, person, governmental authority, or officer.

30 (l) Any pledge by the Corporation of the Trust Estate as security for the Bonds  
31 has the benefit of a consensual lien, perfected, effective, binding, and enforceable against  
32 creditors and all others asserting rights therein or having claims of any kind in tort, contract,  
33 or otherwise, irrespective of whether those parties have notice of the lien and without the  
34 need for any physical delivery, recordation, filing or further act of any kind. As it relates  
35 to the Bonds, the consensual lien on amounts on Matching Fund Receipts that constitute  
36 Residual Receipts shall be automatically released and discharged immediately upon any  
37 deposit by the Trustee of the Residual Receipts into the Residual Fund without further  
38 action, filing or authorization by the Corporation or any other entity, person, governmental  
39 authority, or officer.

40 (m) The Bonds are securities in which all public officers and bodies of the  
41 Government and all agencies, instrumentalities, commissions, authorities, and political  
42 subdivisions thereof, all insurance companies and associations and other persons carrying

1 on an insurance business, all banks, bankers, trust companies, savings banks and savings  
2 associations, including savings and loan associations, building and loan associations,  
3 investment companies and other persons carrying on a banking business, and all other  
4 persons whatsoever who are now or may hereafter be authorized to invest in Bonds or other  
5 obligations of the Corporation, may properly and legally invest funds including capital in  
6 their control or belonging to them.

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

12 (o) The Bonds are the sole obligations of the Corporation:

13 (1) The Bonds, obligations of the Corporation under the Ancillary  
14 Agreements or other contracts, expenditures, accounts, funds, property and  
15 facilities of the Corporation are those of the Corporation and not those of the  
16 Government, or any department, office, agency, commission, municipality, branch,  
17 bureau, agent, officer or employee of the Government;

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

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

25 (4) The Corporation has no taxing power.

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

28 (q) Nothing contained in the Bonds or in the related financing or closing  
29 documents creates an obligation on the part of the Corporation or the Government to make  
30 payments with respect to the Bonds or the Residual Certificate from sources other than the  
31 assets of the Corporation.

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

35 (s) No official, employee, or agent of the Corporation or the Government is  
36 personally liable solely because the Bonds are issued. Members of the board of directors,  
37 while acting within the scope of their authority as directors of the Corporation, are not  
38 subject to any personal or civil liability from the exercise of any of the Corporation's

1 purposes, duties or responsibilities, unless the conduct of the director is determined by a  
2 court of competent jurisdiction to constitute willful wrongdoing or gross negligence.

3 (t) The signature of an officer of the Corporation that appears on the Bonds not  
4 yet issued or delivered, whether manual or facsimile, remains valid and sufficient  
5 notwithstanding that the person has ceased to hold that office.

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

8 (v) The Corporation has the right to issue, for any lawful purpose, Subordinate  
9 Lien Bonds and any other bonds, notes, or other obligations secured in whole or in part by  
10 liens on the Trust Estate that are junior and subordinate to the lien on revenues securing  
11 payment of the Bonds, parity notes, and other parity obligations. Such Subordinate Lien  
12 Bonds may be further secured by any other source of payment lawfully available for such  
13 purposes.

#### 14 **1406. Term of Corporation; No Bankruptcy**

15 (a) The existence of the Corporation is perpetual; but the board of directors by  
16 majority vote, including all of the independent members, may dissolve the Corporation no  
17 earlier than one year and one day after the Bonds, and all other obligations of the  
18 Corporation under the applicable Indenture and the Ancillary Agreements have been repaid  
19 or their repayment has been provided for fully, and the existence of the Corporation  
20 terminates when adequate provision has been made for the payment of all other debts and  
21 obligations, and the winding up of the affairs of the Corporation. No assets or earnings of  
22 the Corporation inures to a private person or entity. Upon dissolution of the Corporation,  
23 title to all property of the Corporation is vested in and becomes the property of the  
24 Government, subject to any liens on the Residual Certificate and the Residual Receipts.

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

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

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

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



1           **§ 1407. Sale of Matching Fund Receipts and Related Rights**

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

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

12                     (1)     The Corporation has adopted a Resolution;

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

16                     (3)     The Government has received the purchase price required for the  
17 rights to the Matching Fund Receipts and the Related Rights set forth in Section  
18 1403(a);

19                     (4)     The U.S. Treasury has provided the written acknowledgment as  
20 contemplated in Section 1403(a), and the Governor on behalf of the Government  
21 has delivered an irrevocable letter of instruction to the Secretary and the DOI as  
22 contemplated in Section 1403(i) ; and

23                     (5)     The GERS Bond is issued concurrently with the sale and  
24 conveyance of the Matching Fund Receipts and the Related Rights.

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

37           (d)     The Legislature by this Chapter is determining the nature of, and procedure  
38 for the absolute conveyance of, property rights. The characterization of the assignment,  
39 sale and transfer of the Matching Fund Receipts and the Related Rights as an absolute

1 transfer and true sale and the corresponding characterization of the property interest of the  
2 Corporation under this Chapter may not be altered, adversely affected or impaired by,  
3 among other things, the occurrence of any of the following factors:

4 (1) the commingling of the Matching Fund Receipts with other funds;

5 (2) the initial retention by the Government of interest in the Residual  
6 Receipts in the Trust Estate as part of the consideration for the sale of the Matching  
7 Fund Receipts and the Related Rights;

8 (3) any recourse that the Corporation may have against the Government  
9 pursuant to the Sale Agreement;

10 (4) any indemnification or other obligations of the Government in favor  
11 of the Corporation;

12 (5) the treatment of the sale, assignment or transfer for tax, financial  
13 reporting, or other purposes;

14 (6) any subsequent Resolution of the Corporation; or

15 (7) any deposit of Matching Fund Receipts in a separate fund in the  
16 Virgin Islands treasury referred to in 26 USC §7652(b)(3) despite the instruction  
17 by the Government to the Secretary of the Treasury and the DOI or otherwise.

18 (e) The sale and conveyance of the Matching Fund Receipts and the Related  
19 Rights pursuant to this Chapter may not be subject to disavowal, disaffirmance,  
20 cancellation, or avoidance by reason of insolvency of any party, lack of consideration, or  
21 any other fact, occurrence, or Virgin Islands law, the United States Code or other law or  
22 rule. On and after the effective date of the sale and conveyance of the Matching Fund  
23 Receipts and the Related Rights pursuant to this Chapter, the Government has no right,  
24 title, or interest in or to the Matching Fund Receipts and the Related Rights conveyed, and  
25 the Matching Fund Receipts and the Related Rights so conveyed are the property of the  
26 Corporation.

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

30 **§ 1408. Government Pledge**

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

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

3 (2) provide an estimate of the amount of rum produced in the Virgin  
4 Islands and exported to the United States mainland in such year to the DOI, with a  
5 copy to the Corporation;

6 (3) provide any information required to make a request to the U.S.  
7 Government for any adjustment to the Matching Fund Receipts for such year to the  
8 Corporation;

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

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

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

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

26 (c) Without limiting the foregoing, the Government pledges to the Corporation  
27 and the Bondholders that, until at least one year and one day after the Bonds and all other  
28 obligations of the Corporation pursuant to the applicable Indenture have been paid or  
29 defeased and all unpaid closing costs or ongoing financing costs have been paid, the  
30 Government shall not:

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

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

36 (d) The Corporation may include these pledges and agreements of the  
37 Government in the initial Indenture or other Indentures, any offering materials, marketing  
38 materials, or any Ancillary Agreement.

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

4 **§ 1409. Further Actions**

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

9 **§ 1410. Choice of Law**

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

14 **§ 1411. Conflict of Laws**

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

26 **§ 1412. Invalidity**

27 (a) Effective on the date that any Bonds are first issued, if any provision of this  
28 Chapter is held to be invalid or is invalidated, superseded, replaced, repealed or expires for  
29 any reason, that occurrence does not affect any action allowed under this Chapter that is  
30 taken by the Government, the Public Finance Authority, the Corporation, any financing  
31 entity, a Bondholder or a party to an Ancillary Agreement prior to the provision being held  
32 to be invalid, or being invalidated, superseded, replaced, repealed or expired, and any such  
33 action remains in full force and effect.

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

1           **§ 1413. Money Bill; No Appropriation Required**

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

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

9           **SECTION 4.** The true interest cost on the Initial Matching Fund Securitization Bonds  
10 shall not exceed 6.00% per annum.

11          **SECTION 5.** The issuance by PFA or other entity of the GERS Bond to the Government  
12 for deposit as an in-kind contribution to the GERS is hereby authorized.

13           (a)     The Government irrevocably assigns as security for the payment of the  
14 GERS Bond Residual Receipts received by the Government pursuant to the Residual  
15 Certificate in an annual amount calculated as follows: \$158,000,000 of Matching Fund  
16 Receipts less debt service on the Initial Matching Funding Securitization Bonds and any  
17 other payment obligations under the Indenture allocable to the refunding, redemption,  
18 payment and defeasance of the Government’s portion of the Existing PFA Bonds, subject  
19 to any agreements relating to the distribution of payment of Residual Receipts deposited  
20 into the Residual Fund (the “GERS Residual Receipts”). To the extent there is a shortfall  
21 in any Fiscal Year, such shortfall shall be carried forward and shall constitute GERS  
22 Residual Receipts in the next Fiscal Year until such shortfall has been satisfied. In all  
23 cases, the payment of the GERS Residual Receipts shall be made only from Residual  
24 Receipts.

25           (b)     The GERS Bond shall, automatically upon issuance, be secured by a statutory  
26 lien on the GERS Residual Receipts. The GERS Bond shall have the benefit of, and be  
27 secured by, a statutory lien upon the GERS Residual Receipts, which statutory lien is  
28 effective, binding, and enforceable against creditors and all others asserting rights therein  
29 or having claims of any kind in tort, contract, or otherwise, irrespective of whether those  
30 parties have notice of the lien and without the need for any physical delivery, recordation,  
31 filing or further act of any kind. The statutory lien arises by operation of law pursuant to  
32 this subsection and automatically attaches to the GERS Residual Receipts from the time  
33 the GERS Bond is issued, without further action, filing or authorization by the  
34 Government, the PFA or any other entity, person, governmental authority, or officer.

35           (c)     The pledge by the Government of the GERS Residual Receipts as security  
36 for the GERS Bond has the benefit of a consensual lien, perfected, effective, binding, and  
37 enforceable against creditors and all others asserting rights therein or having claims of any  
38 kind in tort, contract, or otherwise, irrespective of whether those parties have notice of the  
39 lien and without the need for any physical delivery, recordation, filing or further act of any  
40 kind.

1 (d) Upon the deposit by the Government of the GERS Bond with the GERS,  
2 the GERS shall be deemed the sole and exclusive owner of the GERS Bond, subject to  
3 such rights of transfer by the GERS as set forth in the indenture or other financing  
4 document securing the GERS Bond.

5 (e) The Government pledges to holder(s) of the GERS Bond that, until at least  
6 one year and one day after the GERS Bond have been paid or defeased, the Government  
7 shall not take any action that would, directly or indirectly, (1) result in the repeal,  
8 rescission, or termination of this Section 5, or (2) impair the rights of the holder(s) of the  
9 GERS Bond to receive payment from the GERS Residual Receipts.

10 (f) As a condition to the issuance of the GERS Bond, the GERS shall have  
11 delivered or filed, or caused to be delivered or filed, a Settlement Agreement.

12 (g) Any and all amounts budgeted by the Government to be paid into the GERS  
13 during Fiscal Year 2022 shall, upon the issuance and delivery of the GERS Bond, be  
14 deemed voided, rescinded, and of no further force or effect.

15 **SECTION 6.** Pursuant to 29 V.I.C. § 1409, the Legislature hereby ratifies the following  
16 agreements:

17 (1) The Amendments dated \_\_\_\_\_, 2021 (the “Cruzan  
18 Amendments”), amending the Agreement between Cruzan VIRIL, Ltd. and the  
19 Government of the United States Virgin Islands, dated as of October 6, 2009 (as  
20 amended from time to time, the “Cruzan Agreement”); and

21 (2) The Amendments dated \_\_\_\_\_, 2021 (the “Diageo  
22 Amendments” ) amending the Agreement between Diageo USVI, Inc. and the  
23 Government of the United States Virgin Islands, dated as of June 17, 2008 (as  
24 amended and supplemented from time to time, the “Diageo Agreement”).

25 Thus passed by the Legislature of the Virgin Islands on \_\_\_\_\_, 2021.

26 Witness our Hands and Seal of the Legislature of the Virgin Islands this \_\_\_\_ day of  
27 \_\_\_\_\_, A.D., 2021.