

**RULES and REGULATIONS
VIRGIN ISLANDS ECONOMIC DEVELOPMENT AUTHORITY**

**TITLE 29 V.I.R.R.
HOTEL DEVELOPMENT PROGRAM**

APPROVED:

___ day of _____ 2020

**The Honorable Albert Bryan, Jr.
Governor of the U.S. Virgin Islands**

**Kevin A. Rodriguez
Chairman
Virgin Islands Economic Development Authority**

CERTIFICATION

It is hereby certified that the document below is a true and correct copy of the Hotel Development Program Rules and Regulations (“HOTEL DEVELOPMENT R&R”) adopted pursuant to the authority granted in V.I. CODE ANN. tit. 29, § 1306(e) and 3 V.I.C. § 913.

Virgin Islands Economic Development Authority

Kevin A. Rodriquez
Chairman

The copy below interprets or applies title 29 V.I. Code Ann., chapter 23.

**RULES and REGULATIONS
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HOTEL DEVELOPMENT PROGRAM

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**UNITED STATES VIRGIN ISLANDS RULES AND REGULATIONS
TITLE 29 PUBLIC PLANNING AND DEVELOPMENT
CHAPTER 23
HOTEL DEVELOPMENT PROGRAM**

**SUBCHAPTER 1301
TITLE AND AUTHORITY**

Section 1301-1. Title

These Rules and Regulations shall be known and may be cited as the Rules and Regulations of the Hotel Development Act.

Section 1301-2. Authority

These Rules and Regulations are promulgated pursuant to the authority granted to the Virgin Islands Economic Development Authority in 29 V.I.C. § 1306(e).

**SUBCHAPTER 1302
SCOPE AND DECLARATION**

Section 1302-1. Scope

These Rules and Regulations govern the operation of the United States Virgin Islands Hotel Development Program, 29 V.I. Code, chapter 23, as amended (hereinafter referred to as "Program") including the procedures of the Virgin Islands Economic Development Authority. These rules shall be construed to be consistent with the basic purpose and objectives of the Program as set forth at 29 V.I.C. § 1302. These regulations should be read together with the Program law.

Section 1302-2. Declaration

The Legislature finds and declares that:

- (a) The tourist, hotel and resort industry constitute a major element of the Territorial economic structure;
- (b) Additional hotel accommodations and tourist facilities and services are essential to the further development of the Territory's tourism industry;

(c) Additional hotel accommodations and tourist facilities have a direct impact on the local economy through construction, wages, and other benefits and will grow the economy of the United States Virgin Islands;

(d) The provision of such additional accommodations and facilities, particularly on the island of St. Croix, is declared for the purpose of assisting in the economic growth, restoration, and revitalization of certain underdeveloped areas;

(e) In order to promote the tourism industry of the Virgin Islands, it is essential to provide for the planning, financing, acquisition, construction, improvement, maintenance, and operation of new hotels, and the planning, financing, reconstruction, renovation, maintenance, and operation of existing hotels in the Territory;

(f) The development of additional hotel accommodations and facilities is calculated to result in a significant contribution to the general public welfare and prosperity of the United States Virgin Islands; and

(g) Using future gains in taxes to assist in the development of areas which would not otherwise happen solely through private investment in the reasonably foreseeable future has been proven to have a positive economic impact in their areas of operation.

SUBCHAPTER 1303 DEFINITIONS

Section 1303-1. Definitions.

As used in these rules and regulations and the Hotel Development Program the following words and terms shall have the following meanings, unless the context otherwise requires:

(a) "Affiliate" shall mean a person or entity, related to the Developer, as defined in 26 U.S.C. § 1504, as may be amended from time to time.

(b) "Agreement" means the agreement between the Government and a Developer which sets forth the terms and conditions for assistance for Project development under this chapter.

(c) "Approved Development Costs" mean, and shall be limited to the following categories of costs associated with a Project:

(1) Costs of studies, surveys, plans and specifications, including professional service costs for architectural, accounting, engineering, legal, and planning services;

- (2) Property assembly costs, including acquisition or leasing of land and other property, real or personal, or rights or interests in property, demolition of buildings and other structures, remediation of environmental hazards, and the clearing and grading of land;
- (3) Hard construction costs; and
- (4) Costs of fixtures and equipment to be installed at the Project.

'Approved Development Costs' shall not include any other form of soft costs such as, without limitation, commissions, developer fees, marketing costs and expenses, advertising, promotional costs and expenses nor shall they include any costs incurred prior to September 1, 2017. In addition, to the extent Hotel Development Notes are issued pursuant to this Chapter which are additionally secured by tax increment revenues as permitted under Subchapter 1313 hereof, "Approved Development Costs" may also include those items qualifying as "Development Costs" pursuant to 29 V.I.C. §1201(h)).

- (d) "Authority" means the Virgin Islands Economic Development Authority established in 29 V.I.C. § 1101.
- (e) "CEO" means the Chief Executive Officer of the Virgin Islands Economic Development Authority.
- (f) "Chairman" means the Chairman of the Virgin Islands Economic Development Authority.
- (g) "Completion" means, with respect to any Project, the completion of all work necessary to:
 - (1) open for business to the public in the manner necessary to reasonably expect the Project to generate the projected increased tax revenues necessary to make the required payments on the Project funding under this chapter; and
 - (2) qualify the Project for a closing on the permanent financing.
- (h) "Designated Casino Tax on Gross Revenue" means the gross revenue tax pursuant to 32 V.I.C. §§ 514-515 that is generated from each proposed hotel development project under this chapter.
- (i) "Designated Hotel Room Occupancy Tax" means the hotel room tax pursuant to 33 V.I.C. § 54 that is generated from each proposed hotel development project under this chapter.

(j) "Developer" means any entity or person that seeks to undertake a Project pursuant to this chapter.

(k) "Economic Recovery Fee" means the Economic Recovery Fee pursuant to 29 V.I.C. § 1312 of this chapter.

(l) "ERF Project" means the ERF Project as defined in 29 V.I.C. § 1312 of this chapter.

(m) "Government" refers to the Government of the Virgin Islands.

(n) "Hospitality Firm" means a nationally recognized hospitality consulting firm which has direct and significant experience in hotel and casino development in the Caribbean.

(o) "Hotel" means any building or other structure or group of structures which qualifies as a "hotel" pursuant to 27 V.I.C. § 401(1).

(p) "Hotel Development Notes" means the notes, bonds or other evidence of indebtedness incurred by the Developer or by the Notes Issuer for the benefit of the Developer, with respect to an approved Project, including but not limited to Hotel Revenue Bonds, Conventional Loans, Institutional Financing, or other financing issued with respect to the eligible Project.

(q) "Hotel Development Economic Recovery Plan" means a plan as set forth in 29 V.I.C. §§ 1306(b) and 1312(c)(2)(A).

(r) "Material Change" means any change that may (A) alter the property included in a Project (B) substantially affect the general land uses proposed in the application, (C) substantially change the nature of the Project, (D) change the general description of any proposed developer, user, or tenant of any property to be located or improved within the Project, (E) change the description of the type, class and number of employees to be employed in the operation of the facilities to be developed or improved within the Project, (F) any change to the applicant or its ownership structure which would have been disclosed under Section 1306-1(b) hereof; (G) any increase or decrease to the estimated costs or revenues of the Project as set forth in the application in excess of five percent (5%); or (H) any approvals or disapprovals by other governmental agencies required for the Project.

(s) "Notes Issuer" means the PFA or another issuer authorized to issue Hotel Development Notes under this chapter including at Developer's option, a multi-jurisdictional issuer of notes or bonds, or both.'

(t) "PFA" means the Virgin Islands Public Financing Authority established pursuant to title 29 Virgin Islands Code, chapter 15.

(u) "Program" means the Hotel Development Program established in 29 V.I.C. § 1304.

(v) "Project" means a proposed hotel development project or reconstruction or renovation of a hotel under this chapter that may include all ancillary facilities servicing the hotel development, including without limitation, solar and other energy generation equipment; related marina facilities, including docks and wharves; residential housing; community centers; infrastructure and other facilities.

(w) "Project Budget" means a detailed line item budget for the Project through completion, which shall include a contingency of not less than ten percent (10%).

(x) "Project Development Plan" means a detailed written discussion and analysis of the proposed Project which contains such materials and information as shall be required by the Virgin Islands Economic Development Authority, including, without limitation, each of the following (each in form and substance satisfactory to the Authority):

- (1) The Project budget;
- (2) A complete legal description of the proposed land for the Project, together with an American Land Title Association survey of the land dated no earlier than six (6) months prior to the date of the application, which survey shall include the surveyor's certification of the current zoning designations for said land;
- (3) A complete conceptual plan for the Project including a site plan and schematics for improvements and any proposed restrictive covenants and declarations;
- (4) A comprehensive list of all public or private approvals necessary to complete the Project and whether such approvals have been obtained or are still to be obtained, together with a timeline for obtaining any approvals not yet obtained. Such approvals shall include, but not be limited to, approvals and permits from Department of Planning and Natural Resources and its Division of Coastal Zone Management (including required in connection with the Project adjoining a beach or shoreline, as applicable), zoning and use approvals, approvals required under existing covenants and/or declarations or other record agreements affecting the property on which the Project is proposed to be constructed;
- (5) A detailed listing of sources and uses for all amounts reflected in the Project budget;
- (6) A detailed feasibility study of the Project conducted by a hospitality firm, which study shall include, without limitation, an assessment of the viability of the current market for the proposed Project, the impact of the Project on other market participants, and an assessment of the appropriateness of the assumptions used by the applicant in its proposal which shall include a pro-forma projection of the revenues and expenses of the Project following completion both with and without the requested incentive(s),, together with an opinion of a hospitality firm as to the reasonableness thereof;;

- (7) A detailed schedule of the timing and phasing of each component of the Project demonstrating compliance with all requirements of all necessary permits, together with an opinion of a hospitality firm as to the reasonableness thereof given the existing and expected resources available in the Territory;
- (8) An analysis of the projected tax revenues and benefits to be generated by the Project following the completion through full repayment of the Project financing based on the pro-forma projection of the revenues and expenses of the Project, together with an opinion of a hospitality firm as to the reasonableness thereof;
- (9) A copy of a commitment letter from all lenders proposed to provide financing to the Project dated no more than 60 days prior to the date of the application;
- (10) Documentation evidencing the existence and source of all funds used as owner's equity in the Project;
- (11) In connection with any Project involving the development of a new casino, copies of all documentation evidencing that all necessary approvals and licenses have been obtained by the applicant, which approvals and licenses shall be subject only to completion and inspection of the hotel and casino facilities; and
- (12) Such other documents and information as the Virgin Islands Economic Development Authority may request.

(x) "Reconstruction" means construction related to existing hotel properties and related facilities or infrastructure that have been substantially demolished or damaged by natural or manmade causes, including expansion or extensions of the properties and related facilities or infrastructure as provided by this chapter.

(y) "Renovation" means construction in the nature of substantial repair, updating, enhancement, and refurbishment of existing hotel properties and related facilities or infrastructure as provided by this chapter.

(z) "Resident" means a legal resident of the U.S. Virgin Islands for not less than five (5) years prior to employment, or a U.S. Virgin Islands high school graduate.

(aa) "Trust Fund" means the Hotel Development Trust Fund created for each respective Project established in 29 V.I.C. § 1308.

SUBCHAPTER 1304 PLACEMENT AND PURPOSE

Section 1304-1. Placement and Purpose

(a) The Hotel Development Program is established within the Virgin Islands Economic Development Authority.

(b) The purpose of the Program is to encourage and promote development, construction, reconstruction, and renovation of hotel and resort facilities in the Virgin Islands and to provide financial assistance and other incentives for such development, construction, reconstruction, and renovation which may include commercial facilities, and other hotel facilities for the accommodation and entertainment of tourists and visitors.

(c) The program must:

- (1) To the maximum extent feasible, allow full, public knowledge and participation in the decision making under this chapter;
- (2) To the extent practicable, work in conjunction with existing programs and efforts such as the United States Virgin Islands Enterprise Zone Act, historic preservation, and other economic development efforts;
- (3) Promote conservation, preservation, environmental protection, and rehabilitation while demolition, clearance and relocation must be minimized where possible; and
- (4) Develop and apply clear standards, criteria, and threshold limits that are applicable to all similar property and areas.

SUBCHAPTER 1305 POWERS

Section 1305-1. Powers of the Authority

(a) The Authority shall administer the program designed to assist in the development of hotels, resorts, and related hotel facilities to increase opportunities in tourism enterprises in the United States Virgin Islands so as to facilitate and to accelerate opportunity for employment in these enterprises, particularly of unemployed and underemployed residents of the jurisdiction in which the hotel investment is to be made.

(b) The Authority has the following powers in the administration of the Program:

- (1) To assist those persons interested in building new tourist hotels and resorts or other related tourist facilities in the United States Virgin Islands by maintaining and disseminating information regarding financing available through private and public sources;
- (2) To grant assistance in the construction of new hotel facilities or the reconstruction or renovation of existing hotel facilities and related infrastructure by offering certain tax incentives;

- (3) To review promptly and in reasonable order all applications and causes affecting the granting, suspension, renewal, or revocation thereof for assistance under this chapter;
- (4) To promote due diligence to determine a Project's eligibility for financial assistance to accomplish the purposes of this chapter;
- (5) To hold public hearings on applications considered for approval;
- (6) To require and collect application and administrative fees and charges as the Authority determines to be reasonable in connection with the exercise of any power given to the Authority under this chapter;
- (7) To assist Developers to apply for and accept advances, loans, grants, contributions, gifts, donations, appropriations of funds and any other form of financial assistance from the Federal Government, or other private source for the purposes of this chapter;
- (8) To provide administrative and financial assistance on such terms and upon such conditions as the Authority may determine for the preparation of feasibility studies relating to an eligible project;
- (9) To enter into any agreements or contracts and to execute any instruments and to perform any act or things necessary, convenient, or desirable for the purposes of the Program, including the entering into of agreements or contracts to provide for the payment of principal of and interest on any obligations issued, and to provide necessary reserves in connection with these obligations;
- (10) To promulgate such regulations as the Authority considers necessary to carry out the purposes of this chapter.

**SUBCHAPTER 1306
APPLICATION AND ELIGIBILITY**

Section 1306-1. Application

(a) A person wishing to develop a Project shall apply to the Authority, on forms prescribed and made available by the Authority. Each application for certification shall be accompanied by a Project Development Plan which complies with the requirements of 29 V.I. Code, chapter 23 and these rules and regulations, together with such other information and/or documents as the Authority may require. A non-refundable filing fee of Fifty Thousand Dollars (\$50,000.00) shall be paid with the application, for the costs of processing

the application, and other administrative costs. To the extent the applicant is applying for benefits hereunder as well as benefits under 29 V.I. Code, chapter 22, applicant shall pay only the higher of the fee due hereunder and the fee due under 29 V.I. Code, chapter 22. The Authority may for good cause reduce the application filing fee for any resubmitted application pursuant to V.I.R.R. 1307-3(d). For any Applicant seeking only the Economic Recovery Fee the Authority may reduce the filing fee hereunder by up to twenty percent (20%) if such applicant (i) is applying for a Project that falls under Section 1313-1(a)(3) and (ii) where the total projected cost of the Project is less than \$20 million. All application fees collected pursuant to the provisions of title 29 V.I. Code, chapter 23 shall be deposited into an account or accounts established by the Authority. Any fee adjustments may be made by the Commission on an annual basis and such fee adjustments shall not exceed the Consumer Price Index for that year.

Any third party costs and incurred for independent analysis and/or study shall be borne by the applicant. To the extent required by the Authority, either in connection with the submission of any application or in connection with the review of the application by the Authority, the applicant shall establish an escrow with an initial deposit in an amount to be determined by the Authority for the purposes of funding any costs or fees incurred by the Authority in reviewing and analyzing such proposed Project including, without limitation, fees and costs relating to third party contractors retained by the Authority. Any such escrow shall include a provision requiring the applicant to deposit additional funds as needed if the funds in such escrow fall below a level established by the Authority.

- (1) Applications for hotel development certification shall be filed with the CEO.
- (2) The applicant must file a complete application with all supporting documents in a format approved by the Authority.
- (3) Upon filing, the CEO or designee shall stamp or otherwise record the date of filing on the cover sheet of the original application and each copy, as applicable.
- (4) The CEO shall not accept an application for filing or deem it complete, unless it contains all items set forth in this subchapter.
- (5) Upon accepting an application, the CEO or designee shall notify the applicant in writing that the application has been accepted, the date of such acceptance, and any items temporarily waived.

(b) Before a hotel development project is approved, the applicant must produce an application containing, at a minimum, the following information:

- (1) Narrative in support of the application.

- (2) Project Development Plan.
- (3) Name, physical and mailing address of the applicant;
- (4) Name, address, and telephone number of the local attorney or representative of the applicant, if any.
- (5) Additional information:
 - (A) In the case of a partnership:
 - (i) the name and address of each partner;
 - (ii) a copy of the partnership agreement.
 - (B) In the case of a corporation:
 - (i) The names and addresses of all persons, firms, corporations, etc. owning stock or holding an equitable interest in the applicant and the percentage owned by each;
 - (ii) a certified copy of the certificate of incorporation;
 - (iii) a copy of the Articles of Incorporation and all amendments thereto;
 - (iv) a current Certificate of Good Standing from the Office of the Lieutenant Governor of the Virgin Islands;
 - (v) in the case of a foreign corporation, evidence that the corporation is authorized to do business in the United States Virgin Islands.
 - (C) In the case of a limited liability company or other legal entity, in addition to the appropriate information required in (A) or (B) above:
 - (i) The names and addresses of all members and managers of the limited liability company and the percentage ownership owned by each.
 - (ii) A certified copy of the certificate of formation, articles of organization or other formation document of the limited liability company.
 - (iii) A current Certificate of Good Standing from the Office of the Lieutenant Governor of the Virgin Islands;

(iv) In the case of a foreign limited liability company, evidence that the limited liability company is authorized to do business in the United States Virgin Islands.

(D) In the case of a trust:

(i) Must be created under the laws of the United States Virgin Islands and taxed under the provisions of the Internal Revenue Code of 1986.

(ii) A copy of the full, unredacted trust agreement, which shall include at minimum

(a) the creator of the trust;

(b) the terms and provisions of the trust between the grantor, trustee, and beneficiary;

(c) the state/territory under which the terms and provisions of the trust agreement are to be governed; and

(d) the purpose of the trust.

(iii) The tax identification number of each trust

(iv) A stamped copy of Internal Revenue Service Form 56 (Notice Concerning Fiduciary Relationship) for the trust.

(E) For any partner, stockholder, member, manager, trustee, beneficiary or other entity holding ownership of control of any entity applying for benefits under the TIF Program, such entity shall also provide similar disclosure for such partner, stockholder, member, manager, trustee, beneficiary or other entity similar in scope as is required for such type of entity as set forth in Subsections (A)-(D). Such disclosure is further required for any partner, stockholder, member, manager, trustee, beneficiary or other entity holding ownership of control of any entity disclosed hereunder, provided however that no disclosure is required if the entity providing such disclosure holds less than five percent (5%) of the beneficial ownership or fifty percent (50%) of the control of the entity applying for benefits under the TIF Program. Any such disclosures shall be accompanied by an ownership chart showing all such entities for which such disclosure is made and their relation to the Applicant.

- (6) Whether applicant, or any one or more of its stockholders or partners have, or have had any proprietary interest in any other enterprise which is or was a beneficiary of any program under the Authority's purview.
- (7) Whether applicant is operating in the United States Virgin Islands on the date of application, and if so, the date the operation began.
- (8) A statement as to the nature of any labor problems of the applicant or any affiliated corporation or entity, during the two-year period prior to the date of application, including, if applicable, a certificate of clearance from the Department of Labor.
- (9) A letter from the U.S. Virgin Islands Bureau of Internal Revenue indicating the status of all U.S. Virgin Islands tax obligations of the applicant or a copy of a current USVI business license and IRS Form 8821 authorizing the Authority to receive and discuss information related to the status of applicant's U.S. Virgin Islands tax obligations.
 - (a) In the case of applicants that are Subchapter S corporations or partnerships, a letter (or if necessary, separate letters) shall be provided not only for the applicant entity, but also for each individual stockholder or partner who is a resident of the United States Virgin Islands, or who was a past resident of the United States Virgin Islands or in the absence of the letter, IRS Form 8821 authorizing the Authority to receive and discuss information related to the status of applicant's U.S. Virgin Islands tax obligations.
 - (b) This requirement is waived in the case of corporations which at the time of application, have been in existence less than one (1) year and have not yet begun operation.
- (11) Profit and loss statement and balance sheet for the most recent tax year of the applicant, except that in the case of an applicant which has been in business for less than one (1) year, or non-operational for more than one (1) year, only a balance sheet shall be required.
- (12) If the applicant, or any corporate stockholder is publicly traded, a copy of the most recent annual report of each such corporation.
- (13) A Release Authorization.
- (14) Any additional information or documents in support of the application which applicant wishes to submit.
- (15) Such other information as the Authority may reasonably require.

- (16) The signature of the applicant or a responsible officer, partner or agent of the applicant attesting to the truth, accuracy, and completeness of the application and any documents submitted in support thereof.
- (17) A Developer applying for authorization to impose an Economic Recovery Fee to secure Hotel Development Notes shall submit an application in accordance with the requirements set forth in 29 V.I.C. § 1306(b); shall be considered for approval in accordance with 29 V.I.C. § 1307; and shall comply with 29 V.I.C. § 1312(c)(1).

Such application shall also include the following:

- (1) A statement of the intention to obtain authorization to assess an Economic Recovery Fee;
- (2) The amount of the proposed fee, which shall not be greater than the amount set forth in 29 V.I.C. § 1312(g);
- (3) The expected uses of the proposed fee;
- (4) The time frame for expected imposition of such fee which shall not exceed the longer of the maturity of the Hotel Development Notes or thirty years; and
- (5) Existing levels of Designated Hotel Room Occupancy Taxes and Designated Casino Taxes in the amount generated by a particular Project in the 12 months prior to the submission of the application.

(c) Before a Project is approved, the applicant must receive certification from the Authority that the Project and its Project Development Plan comply with the provisions of 29 V.I.C., chapter 23 and these rules and regulations, and that approving the Project for the program is in the best interests of the Territory.

(d) Each application shall be accompanied by a written guarantee that all contracts and subcontracts to be awarded in connection therewith shall contain appropriate provisions by which contractors and subcontractors or their assignees agree to comply with the preferred bidders' statute, 31 V.I.C. § 236a.

(e) Neither the Developer nor any Affiliate thereof may be listed on any of the lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury (OFAC), the Bureau of Industry and Security of the United States Department of Commerce or their successors, or on any other list of persons or entities with which the Territory may not do business under any applicable law, rule, regulation, order, or judgment.

(f) Neither the Developer nor any Affiliate thereof may be in violation or non-compliance with any program under the Authority's purview.

(g) To the extent applicable, the Chairman of the respective island's Coastal Zone Management Committee, the Commissioner of the Department of Planning and Natural Resources, the Attorney General of the United States Virgin Islands, the Executive Director of the Virgin Islands Housing Finance Authority, the Chief Executive Officer of the Virgin Islands Water and Power Authority, the Tax Assessor, and any other relevant department or instrumentality of the Government of the Virgin Islands shall furnish the Authority any information and certificates as may be required by the Authority to confirm a Project's compliance with the requirements of this chapter and its regulations.

(h) To the extent, after the date of submission of the application hereunder, there is a material change to any of the information contained therein, the applicant shall promptly update the application to reflect such change.

Section 1306-2. Eligibility

(a) To be eligible for benefits under this Chapter, the Project must:

1. Be located in the U.S. Virgin Islands;
2. Eighty percent (80%) of all persons employed shall be residents of the U.S. Virgin Islands, as defined in section 1303-1(z), during any period that taxes are directed toward the payment of any Hotel Development Note owed by the Developer with respect to a Project, unless granted a waiver from the Department of Labor certifying that there are insufficient residents available with the necessary skill and ability to perform the services required by applicant within the U.S. Virgin Islands.
3. Obtain all of the applicable licenses or permits, permanent, temporary, or otherwise as required by Title 27 of the Virgin Islands Code and shall maintain such licenses or permits during the term of the agreement;
4. Comply with all applicable laws, rules, ordinances, and regulations; and
5. Such other requirements as the Authority may require in conformity with the Hotel Development Program.

SUBCHAPTER 1307 PROCEDURES AND CERTIFICATION

Section 1307-1. Procedures

After receipt of an application that meets the criteria set forth in subchapter 1306, the Authority shall certify or deny certification of the proposed project under the following procedures:

(a) Meetings and Hearings

(1) **Applicability:** The rules of this section shall apply to all meetings and hearings on applications for certification and, unless otherwise specified, to any other Authority proceeding at which comment from the general public has been requested or is generally allowed.

(2) **Quorum:** The quorum for meetings of the Authority under this chapter shall be five (5) members pursuant to 29 V.I.C. § 1102(c). The quorum for any public hearing shall be five (5) members; provided, however, that for good cause shown, the Chairman may waive the required quorum from five (5) to no less than four (4) members. All action shall be taken by vote of the majority of the members present. Members may attend via teleconference.

(b) Sunshine Act

(1) All public hearings shall be held in accordance with the Government in the Sunshine Act, 1 V.I.C. Sections 251 *et seq.*

(2) The CEO shall maintain a list of persons who request notification of all meetings and hearings open to the public or of particular meetings or hearings where certain specified action will be taken.

(3) The CEO shall provide notice to such persons described in subsection (b) (2) above of such public hearings.

Section 1307-2. Public Hearing

(a) Scheduling

(1) The CEO shall schedule a public hearing on an application for certification for dates no later than 60 calendar days after the date such application has been accepted as complete and the independent financial assessment is completed. Whenever possible and convenient, but taking into consideration the necessity for a full and complete report and recommendation, the CEO shall schedule such hearing at the earliest possible date.

(2) The CEO shall schedule any public hearings for other purposes, as requested by the Authority or the Chairman.

(b) Notice

- 1) Notice of public hearings shall be served promptly upon the setting of the hearing date, but in no event later than nine (9) calendar days in advance of the hearing date.
- 2) Notice shall be served by mail or in person on:
 - a) Commission members,
 - b) Applicants whose applications will be heard at such hearing,
 - c) Any person whose name appears on the list required to be kept pursuant to section 1307-1(b)(2), as having requested to be served with notice of public hearings, and
 - d) Such persons as the CEO may deem appropriate.
- 3) Such notice shall also be published at least two (2) times in at least one (1) newspaper of general circulation in the District of St. Thomas/ St. John and at least two (2) times in at least one (1) newspaper of general circulation in the District of St Croix.
 - a) The first required publication shall be no later than nine (9) calendar days prior to the date of the hearing and no earlier than 14 calendar days prior to the date of the hearing.
 - b) The second required publication shall be no later than two (2) calendar days prior to the date of the hearing and no earlier than seven (7) calendar days prior to the date of the hearing.
- 4) Published and served notices shall include:
 - a) the time, date, place, and purpose of the hearing,
 - b) The name(s) of applicant(s) whose application will be heard.
 - c) must generally identify the area covered by the Project Development Plan.
 - d) must outline the general scope of the proposed Project.
 - e) A short description of any other proceedings which will be the subject of the hearing, and
 - f) An invitation that any person interested in the approval or disapproval of any application, or interested in making a statement with regard to such application or other proceeding which will be the subject of the hearing, may appear and be heard, provided such person gives the notice required.

(c) Place

To the extent possible, such hearings shall be held in the district in which the Project is to be located.

(d) Procedures

- (1) At the public hearing, the applicant and its representatives shall have a minimum of 15 minutes to make an oral presentation

supporting its application. This time period may be lengthened at the discretion of the Chairman.

- (2) Following the oral presentation, the members of the Authority and the staff of the Authority in the order recognized by the Chairman, shall be given an opportunity to question the applicant and its representatives.
- (3) Members of the general public who have previously given notice shall be given five (5) minutes to make statements. This time period may be lengthened at the discretion of the Chairman.
- (4) If time permits, the Chairman may also recognize other members of the general public who have not given the required notice. These individuals shall have such time as the Chairman, in his discretion, may allow, to make pertinent statements.

(e) Recording

The CEO shall arrange for all public hearings to be recorded by a stenographic process and for transcripts to be prepared within 30 calendar days.

(f) Appearance by Interested Persons

Any member of the general public who desires to be heard at a public hearing shall provide the CEO with written notice of the matter on which he would like to be heard and the approximate length of his remarks or statements at least 24 hours prior to the date of the public hearing.

(g) Data Requests

- (1) At the public hearing on any application, the Authority may request the applicant to provide any data or information related to the application which was not previously provided. The applicant shall supply such data or information in a timely fashion.
- (2) Simultaneously with making the request, the Authority may set a reasonable date by which the applicant shall have to supply the requested data or information, and it may, if it so states at the time the date for response is set, consider the application withdrawn as of such date if, the requested data or information is not provided by such date. The time may be extended at the discretion of the Chairman.

Section 1307-3. Decision Meeting and Certification

(a) After public hearing on the Project and upon receiving confirmation from the CEO that the statutory requirements have been met, the Authority shall, at a decision meeting, carefully consider all relevant factors in executive session at a meeting closed to the public, and shall make its determination regarding whether said Project should be certified for approval by the Governor.

- (1) The Authority shall meet to make its determination regarding certification of an application for benefits within 30 calendar days of the latter of the following two (2) dates:
 - A. The date of the public hearing on the application; or
 - B. The date on which the application is accepted as complete and all additional data or information referred to in section 1307-2(G)(1) above has been received by the Authority.
- (2) After carefully considering all relevant factors regarding an application including the contents of the application, statements of the applicant and its representatives, statements of the general public, and the criteria set out in the V.I. Code and these Rules and Regulations, the Authority shall certify whether the Project should be approved or denied.
- (3) The reason for such approval or denial shall be fully set forth on the record, and, in the case of a denial, the Authority may also specify changes in the application which may lead to more favorable consideration.
- (4) If the Authority is unable to reach a determination, another meeting shall be scheduled within 30 calendar days to consider the application again.

(b) In determining certification of the Project, the Authority shall consider the materials and opinions provided with the application and the testimony of the public, together with the following criteria:

- (1) Whether the Project is financially feasible;
- (2) Whether the Project would likely result in the projected increase of tax revenues payable to the Government, specifically with regard to hotel room occupancy tax revenues, casino tax revenues, and Economic Recovery Fee revenues generated from such Projects to be applied to payment of the Project funding;
- (3) Whether the development would not happen solely through private investment in the reasonably foreseeable future;
- (4) Whether an allocation, dedication or contribution of the hotel room occupancy tax incremental revenues casino tax incremental revenues, and Economic Recovery Fee revenues will be sufficient, together with the other moneys available therefor to support payment of the debt obligation;
- (5) Whether the Project's total anticipated benefit to the Government exceeds the total anticipated costs to the Government; and

(6) Whether the Project, taken as a whole, is in the best interests of the Government and the citizens of the United States Virgin Islands;

(c) If upon consideration of the criteria set forth in subsection (b) of this section, the Authority decides to certify the Project for approval by the Governor, the Authority shall enter into good faith negotiations with the parties for a Project Agreement setting forth the obligations of the parties, on such terms and conditions the Authority and the Developer agree upon consistent with this chapter and its regulations. The Project Agreement shall not be valid unless approved by the Governor and ratified by the Legislature pursuant to 29 V.I.C. § 1307(c).

(d) If upon consideration of the criteria set forth in subsection (b) of this section, the Authority decides that the Project does not comply with the requirements of this chapter and its regulations, the Authority shall so notify the Developer in writing specifying the areas in which the Project fails to meet the requisite criteria. The Authority shall allow the Developer up to 60 days to cure any defects. The Board may extend the 60-day period for good cause. The Developer shall file with the Authority a request for a waiver within the 60-day period. Upon Developer's resubmission within the 60-day period, or extended period, the Authority shall schedule the matter for reconsideration pursuant to section 1307-4.

If the Developer fails to cure the defect(s) within the 60-day period, or extended period, the Authority shall deny certification of the Project without prejudice, and any resubmittal of the Project under this chapter shall require a new application.

(e) Upon approving the Project, the Developer shall reimburse the Authority for all or part of the costs of any and all independent financial assessment conducted in reviewing the application for certification of a proposed Project and any other related costs incurred, which are not otherwise paid from the application fee. The costs may be paid, in the discretion of the Authority, from the proceeds of bonds, Hotel Development Notes or other evidences of indebtedness issued with respect to a Project under conditions prescribed in the regulations promulgated by the Authority.

The regulations governing the Project Agreement set forth subsection (b) of this section may provide that the Designated Casino Tax on Gross Revenue, Designated Hotel Room Occupancy Tax, and the Economic Recovery Fee payable into the Project's Hotel Development Trust Fund and securing Hotel Development Notes may be paid directly to the trustee or to the trustee's collecting agent for the Hotel Development Notes for deposit into the funds and accounts held by the trustee or trustee's collection agent for the benefit of the noteholders.

(f) The Authority's approval of a Project and the Governor's approval of a Project Agreement are solely for the purposes of this chapter only and do not constitute the approval of any portion of the Project for any other purposes including, without limitation, environmental and building permits.

(g) The Project Agreement shall contain such non-financial terms as are typically found in commercial construction loan documentation between sophisticated developers and the largest banks located in the Territory. Without limiting the foregoing, such terms shall include:

- (1) The requirement that all of the Developer's equity in the Project be in the form of cash or verified land value. Development fees and the value of services shall not be considered valid equity.
- (2) A prohibition on any material amendment to the Project budget or Project Development Plan without the Authority's prior written approval.
- (3) A prohibition on any re-financing of any loans of which taxes are directed toward the payment of without the Authority's prior written approval. Taxes may not be used for any re-financing in excess of the balance of the re-financed loan.
- (4) A requirement that the Developer shall commence substantial construction of the Project in accordance with the specified period, subject to the provisions approved by the Authority for the Project.
- (5) A requirement that the completion of the Project within a specified period as agreed in the Project Agreement following the Project's commencement date, unless otherwise extended for good cause with the approval of the Authority.
- (6) A requirement that the Project be constructed and operated in conformance with all applicable laws, rules, regulations, and ordinances.
- (7) A requirement that the Developer submit reports to the Authority as requested by the Authority in order to keep the Authority apprised of the progress of the Project and its operation, together with such other information as the Authority may request.
- (8) A requirement that the Project be an 'open book' project, meaning that the Developer and the general contractor (or contractors if more than one) will provide ongoing access to the Authority and its agents for the purpose of reviewing and auditing their respective books and records relating to any aspect of the Project subject to the program.

- (9) A requirement that the Project beneficiary shall pay to the Authority an annual fee to be determined by the Authority; provided that the annual fee shall be either (1) one and a half percent (1.5%) of the projected debt service payable that year, or (2) One Hundred Thousand Dollars (\$100,000.00) per Project, whichever is less. Payment shall be made by January 31st of each year.
- (10) Any hotel receiving financial assistance or any other incentives under the Hotel Development Program must include, as a part of its self-funded marketing plan, a component to market the Territory, which component must be approved by the Commissioner of Tourism.
- (11) The name of the Project and the Developer;
- (12) The physical and mailing address of the Developer;
- (13) The date on which the application was accepted as complete by the CEO;
- (14) The type of project for which benefits are granted;
- (15) The date by which any investment shall be commenced;
- (16) The amount and type of investment;
- (17) The number of employees required to be maintained by the Developer;
- (18) The date by which any employment requirement was or shall have been met;
- (19) A statement that the Developer shall maintain payroll accounts, from which local employees are paid, in a bank licensed and conducting business in the United States Virgin Islands;
- (20) Such other conditions as the Authority shall deem appropriate, not inconsistent with the provisions of the Virgin Islands Code or these Rules and Regulations; and
- (21) A statement that the Agreement shall be effective only for so long as the Developer continues to observe and perform each and every condition and requirement in the Agreement.

(h) The Authority shall exercise reasonable discretion in enforcing the Project Agreement, but shall not be authorized to waive any material default by the Developer without the

approval of the Governor. A “material default” shall be as set forth in the Project Agreement. The Authority may impose fines for non-compliance and late reporting. These fines shall be deposited into the Industrial Promotion Fund, as established under 29 V.I.C. § 726.

(i) The Authority shall submit an annual report to the Governor with respect to the operations, finances, and achievement of the economic development objectives of the Projects approved under this chapter. The Authority shall review and evaluate the progress of each eligible Project and devise and employ techniques for forecasting and measuring relevant indices of accomplishment of its goals of economic development, including, but not limited to:

- (1) The actual expenditures compared to original estimated costs;
- (2) Whether there have been significant cost increases over the original estimates;
- (3) The number of jobs created, or to be created, by or as a result of the eligible Project;
- (4) The cost, or estimated cost, to the Government in the creation of those jobs;
- (5) The amount of private capital investment in, or stimulated by the Project, in proportion to the public funds invested in such Project;
- (6) The number of additional businesses created and associated jobs;
- (7) Any impact on tourism.

(j) The Authority shall obtain an annual independent financial status report on each Project approved under this chapter. The independent financial analysis must include, but not be limited to determinations as to whether the hotel occupancy taxes and casino taxes actually generated by the project are equal to the estimates made at the time the eligible Project was approved, whether the Project employment statistics are equal to the projected estimates, and whether the eligible Project is economically viable. The Authority may require the Developer to reimburse the Authority, through escrowed monies as set forth in subsection (e) above, for the costs of the annual analysis. The Authority shall make the results of the analysis available to the public.

Section 1307-4. Reconsideration

(a) Reconsideration on Initiative of the Authority

- (1) The Authority may on its own initiative, vote to reconsider any of the following actions within the appropriate time periods:

- (A) A recommendation to certify a project may be reconsidered, in whole or in part, at any time before the Project Agreement is executed by the Government;
- (B) A vote to deny certification of a project may be reconsidered within 30 calendar days of a petition to reconsider or receipt of information to cure and comply with any defects;
- (2) The Authority, if it votes to reconsider, may also vote to rehear the matter if it determines that to do so is necessary or desirable.
- (3) The Authority must first make the findings required by Section 1307-4(c) below before voting to reconsider.

(b) Petition for Reconsideration

- (1) Developer may petition the Authority to vote to reconsider its action with respect to its' application or Agreement, by letter to the Chairman, with a copy to the CEO, within 30 calendar days, excluding Sundays and holidays, from the date a report is received by Developer.
- (2) The petitioner:
 - (A) Shall allege at least one of the factors set forth in section 1307-4(c) (Findings in Support of Reconsideration);
 - (B) Shall fully set forth which factors are applicable and the reasons;
 - (C) Shall include such comments as Developer wishes to put forward with regard to the findings, conclusions, or other matters; and
 - (D) May request a rehearing.
- (3) The CEO shall schedule a vote on the petition at the earliest practicable meeting of the Authority after the petition is received.
- (4) The Authority:
 - (A) May vote to grant or deny the petition.
 - (B) Shall set forth on the record, if it votes to grant the petition, all findings required by section 1307-4(c) (Findings in Support of Reconsideration) on which it based its determination.
 - (C) May vote to rehear the matter if it determines that to do so is necessary or desirable.

(c) Findings in Support of Reconsideration

The Authority shall reconsider an action only if it first finds that:

- (1) There has been a change in material fact or in applicable law, which change occurred after the public hearing; or
- (2) The Authority's action was based on a substantive error in material fact or in applicable law;
- (3) The Authority's action was based on a finding, conclusion, or other matter upon which the petitioner has not previously had the opportunity to comment; or
- (4) The Petitioner seeks to cure defects in accordance with Section 1307-3(d).

- (d) Procedure on Reconsideration
 - (1) A vote to reconsider shall
 - (a) Stay further action by the Authority on its original action.
 - (b) Stay all applicable time limits in these Rules and Regulations. Except for the 30-day period, excluding Sundays and holidays, set forth in section 1307-4(b)(1) above, time limits for actions which must take place within a certain time following a public hearing or meeting at which a determination is made shall begin anew upon a final action on the reconsideration.
 - (2) If the Authority votes to rehear an application, such rehearing shall be scheduled.
 - (3) If the Authority does not vote to rehear, it may immediately after voting to reconsider, discuss the merits of the petition and make a determination, or it may elect to postpone consideration on the merits for no more than 30 calendar days, unless additional information is being requested of the Petitioner, in which case such time limit shall be extended to the earliest practicable meeting date after the information is received.

SUBCHAPTER 1308
HOTEL DEVELOPMENT TRUST FUND

Section 1308-1. Hotel Development Trust Fund

(a) The Authority shall establish for each approved Project a separate Trust Fund, which for the purposes of this chapter shall also be known as "the Project's Hotel Development Trust Fund" or the "Project's Fund" pursuant to 29 V.I.C. § 1308(a). Monies allocated to and deposited into the Project's Fund from the Designated Hotel Room Occupancy Tax, Designated Casino Tax on Gross Revenue, and the Economic Recovery Fee revenues, if applicable, generated from the approved Project must be made available as revenue to be utilized towards reducing the Hotel Development Notes incurred for the development of the approved Project. Existing levels of Designated Hotel Room Occupancy Taxes and Designated Casino Taxes in the amount generated by a particular Project in the 12 months prior to the submission of the application for the issuance of the Hotel Development Notes may not be used to fund the Hotel Development Trust Fund. The Authority shall notify the Virgin Islands Bureau of Internal Revenue of the identity of the Project, and the amount or percentage of the Designated Hotel Room Occupancy Tax, Designated Casino Tax on Gross Revenue, and the Economic Recovery Fee, if applicable allocated to be deposited into the Project's Fund.

(b) Notwithstanding the provisions 33 V.I.C. § 54(e) and 32 V.I.C. § 517(c), and subject to the limitations set forth in 29 V.I.C. § 1313, the hotel occupancy taxes, pursuant to 33 V.I.C. § 54(b), the casino revenue tax pursuant 32 V.I.C. § 515, and the Economic Recovery Fee, if

applicable, pursuant to 29 V.I.C. § 1312(c)(1), generated from the approved Project must be deposited into the Project's Hotel Development Trust fund. For the purposes of this section, notwithstanding the provisions of 32 V.I.C. §§ 514-515, until the outstanding Hotel Development Notes with respect to a Project have been paid, the maximum casino tax rate may be increased to thirty-five percent (35%). Once the debt is retired, the casino tax shall return to twelve percent (12%) pursuant to the provisions of 32 V.I.C. § 515.

- (1) During the period that any hotel occupancy taxes, casino taxes, or Economic Recovery Fees, if applicable, are applied towards the payment of any Hotel Development Note with respect to a Project, not less than eighty percent (80%) of the persons employed in the operation, maintenance, and management of the Project facilities must be legal residents of the U.S. Virgin Islands for not less than five (5) years prior to employment, or a graduate of a U.S. Virgin Islands high school; provided that upon application to the Virgin Islands Department of Labor for a waiver:
 - (A) The Department of Labor certifies that legal residents as defined under this chapter, with the necessary ability to perform the services required and in numbers sufficient to meet the needs for personnel for such employment are not available within the U.S. Virgin Islands for employment.
 - (B) The Department of Labor shall verify the facts stated in the application and unless it is determined that such application is without factual basis, promptly after the filing of such application, authorizes the hotel operator to employ a greater percentage of non-U.S. Virgin Islands residents for such period or periods that such non-availability of personnel exists.
 - (C) If the Department of Labor, has not notified the hotel operator in writing within 14 days after the filing of the hotel operator's application that it has determined such application to be without factual basis, stating its reasons for such determination, then the hotel operator's application must be granted, subject only to the right of the Department of Labor to proceed to revoke the application as set forth in paragraph (b)(2) of this subchapter.
 - (D) The Department of Labor shall provide the Authority a copy of the certification or denial of the waiver simultaneously with its notification to the Developer.
- (2) Any authorization by the Department of Labor pursuant to subsection (1) subparagraphs (A) or (B) may not be revoked except upon 30 days' notice to the hotel operator and after opportunity for the hotel operator to appear and be heard and present evidence with respect to the revocation in accordance with the Department of Labor rules and regulations and policies or procedures, which opportunity may not exceed 60 days after the date of the notice.

- (3) The Department of Labor shall cooperate with the hotel operator in an effort to make available for employment by the hotel operator and its Affiliates a sufficient number of persons with appropriate aptitude, training, and experience, regardless of their nationality, domicile, residence, or place of origin.
- (4) In constructing hotel facilities, the hotel operators shall give preference in employment to residents of the U.S. Virgin Islands.
- (5) Penalties. Subject to 29 VIC § 1310(b)(1), Any hotel operator found in violation of this section, after notice to the hotel operator and after opportunity for the hotel operator to appear and be heard and present evidence with respect to such violation, shall have their tax subsidy decreased by ten percent (10%) each month until the defect is cured. The decrease in tax subsidy shall be cumulative and shall be held in the Project's Hotel Development Trust Fund until said defect is cured. The funds held may be released by the Authority upon notification from the Department of Labor that the hotel operator has complied with this section. Funds shall only be released for the specific period in which a defect is cured. Funds not released shall be disbursed in accordance with paragraph (h) of this subchapter.

(c) The Authority may not expend, commit to expend, or pledge an interest in any of the revenues held in the Project's Hotel Development Trust Fund, other than to the payment of a Hotel Development Note or expenses relating to the administration of the Project's Hotel Development Trust Fund.

(d) The dedications and contributions of the hotel room tax, casino tax revenues, and the Economic Recovery Fee revenues, if applicable, may not impair the existing obligations of the Government, PFA or the Authority and may not include tax revenues that would violate the Revised Organic Act of 1954.

(e) Upon adoption of a Resolution by the Authority or the Notes Issuer, as applicable, following ratification of the Agreement by the Governor, the PFA, or the Director of the Internal Revenue Bureau, as applicable, shall transfer hotel room tax, casino tax revenues, and/or the Economic Recovery Fee revenues to the Note Issuer for deposit in the Project's Hotel Development Trust Fund or directly to the trustee of the Hotel Development Notes for deposit into the funds and accounts held by the trustee for the benefit of the holders thereof, all tax revenues, and the Economic Recovery Fee revenues, if applicable, that are allocated to the Project's Fund pursuant to 29 V.I.C. § 1313, related to such Hotel Development Notes until the certification by the Authority, the Notes Issuer, or such trustee that all development costs to be paid from the Project's Hotel Development Trust Fund including the Hotel Development Notes have been paid in full.

(f) While Hotel Development Notes remain outstanding, the tax rates, and the Economic Recovery Fee, if applicable, may not be reduced, if the reduction would impair the ability of the Developer to pay any costs to which the tax revenues, and the Economic Recovery Fee, if applicable, have been pledged or otherwise committed by the Authority, or the Notes Issuer, as applicable, including the timely payments of debt service on the Hotel Development Notes.

(g) Hotel Development Notes of every issue may, by their terms, be payable solely out of the tax revenues and the Economic Recovery Fee, if applicable, pledged to and received in connection with the approved Project and deposited to the Project's Hotel Development Trust Fund. The lien created to secure the Hotel Development Notes may not attach to any other assets of the Authority or the Government or the PFA and are special limited obligations of the Authority, the Government, the PFA or the Developer, as applicable, payable solely from the pledged tax revenues and the Economic Recovery Fee, if applicable, of the Project. The holders of the Hotel Development Notes have no right to require the imposition of any tax or establishment of any rate of taxation in order to obtain the amounts necessary to pay and retire such Hotel Development Notes. Hotel Development Notes may be issued that are secured separately by any Designated Hotel Room Occupancy Taxes, any Designated Casino Taxes, or any Economic Recovery Fees, or any combination thereof.

(h) Any funds remaining in the Project's Hotel Development Trust Fund after the Hotel Development Notes have been satisfied, or the Agreement is terminated, shall be directed to the appropriate fund or funds, to which they would have been deposited save for the Hotel Development Agreement.

SUBCHAPTER 1309 HOTEL DEVELOPMENT NOTES AUTHORIZATION

Section 1309-1. Hotel Development Notes Authorization

(a) The Notes Issuer may issue Hotel Development Notes to finance total Project costs of eligible Projects approved pursuant to this chapter, including, without limitation, costs of issuance, debt service and other reserves, and related ancillary costs and expenses. Hotel Development Notes may be issued to refund other Hotel Development Notes issued pursuant to title 29 V.I. Code, chapter 23. Hotel Development Notes may not be issued in an amount exceeding the total costs of implementing the hotel development financing plan for which they were issued.

(b) Hotel Development Notes for renovation or reconstruction Projects cannot include the amount received from insurance proceeds.

(c) The Notes Issuer may execute such financing documents as may be necessary or

appropriate for the issuance, security, and administration of Hotel Development Notes, investment of proceeds and moneys in the accounts provided for in, or pursuant to, this chapter, and the application of the proceeds of the Hotel Development Notes and the moneys and investments in such accounts, and for the purposes set forth in 29 V.I.C. § 1304, including financing documents with Developers.

(d)

- (1) To secure the full and timely payment of Hotel Development Notes for each Project issued under this chapter in accordance with their respective terms, all such Hotel Development Notes shall be secured upon issuance by a statutory lien on all Designated Hotel Room Tax and Designated Casino Taxes on Gross Revenue and Economic Recovery Fees allocated to the Project's Fund pursuant to 29 V.I.C. § 1313. The lien shall arise solely by force of this chapter specifically upon the issuance of any Hotel Development Notes issued after the effective date of this chapter and shall automatically attach without further action or authorization by the Government or the PFA. The lien shall be valid and binding from the time the Designated Hotel Room Occupancy Tax and Designated Casino Tax on Gross Revenue and Economic Recovery Fees are received by or for the account of the Government, allocated to the Project's Fund pursuant to 29 V.I.C. § 1313 and the lien shall immediately attach to the Designated Hotel Room Occupancy Tax and Designated Casino Tax on Gross Revenue and Economic Recovery Fees allocated to the Project's Fund pursuant to 29 V.I.C. § 1313 and be effective, binding and enforceable against the Government or the PFA, as applicable, their respective successors, transferees, or creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act.
- (2) The Government is hereby authorized and directed to covenant and agree for the benefit of the holders of the Hotel Development Notes outstanding from time to time that for so long as any Hotel Development Notes remain unpaid, the Government shall defend, preserve and protect such statutory lien against all claims and demands of third parties, and not revoke, terminate or amend such statutory lien in any way that materially adversely affects the rights of any holder of Hotel Development Notes.

SUBCHAPTER 1310 HOTEL DEVELOPMENT NOTES SECURITY

Section 1310-1. Hotel Development Notes Security

- (a) A series of Hotel Development Notes may be secured by a trust agreement or trust

indenture between the Notes Issuer and a trustee having trust powers, or by a secured loan agreement or other instrument giving power to the trustee by means of which the Notes Issuer may do the following:

- (1) Make and enter into any and all agreements and covenant with the trustee or the holders of the Hotel Development Notes that the Notes Issuer may determine to be necessary or desirable, including, without limitation, covenants and agreement as to any of the following:
 - (A) the application, investment, deposit, use and disposition of the proceeds of Hotel Development Notes and the other monies, securities, and property;
 - (B) the assignment by the Notes Issuer of its rights in any agreement;
 - (C) the terms and conditions upon which additional Hotel Development Notes may be issued by the Notes Issuer; provided that the term of any Hotel Development Notes may not exceed 30 years from the date of issuance;
 - (D) providing for the appointment of a trustee to act on behalf of noteholders; and
 - (E) vesting in a trustee, for the benefit of the holders of Hotel Development Notes, or in the noteholders directly, such rights and remedies as the Notes Issuer determines.
 - (2) Pledge, mortgage or assign monies, agreements, property or other assets of the PFA or the Government, either presently in hand or to be received in the future, or both.
 - (3) Provide for bond insurance and letters of credit, or otherwise enhance the credit of and security for the payment of its Hotel Development Notes; and
 - (4) Provide for any other matters of like or different character that in any way affects the security for or payment of the Hotel Development Notes.
- (b)
- (1) The Government pledges to contract and agree with the holders of any Hotel Development Notes issued pursuant to this chapter that, subject to the provisions of the financing documents, the Government may not limit or alter the basis upon which available revenues are received, allocated, applied and pledged pursuant to this chapter; may not impair the contractual obligations of the Notes Issuer to fulfill the terms of any agreement made with the holders of the Hotel Development

Notes, may not in any way impair the rights or remedies of the holders, and may not in any way alter the exemptions from taxation provided for in this chapter, until the Hotel Development Notes and the interest on the Hotel Development Notes, with interest on any unpaid installment of interest and all costs and expenses in connection with any suit, action or proceeding by or on behalf of the holders, are fully met and discharged.

- (2) The Notes Issuer may include the pledge and agreement of the Government as part of the contract with the holders of any of its notes. This chapter constitutes a contract between the Government and the holder of the Hotel Development Notes authorized by this chapter.
- (3) To the extent that any acts or resolutions of the PFA may be in conflict with this chapter, this chapter is controlling.

(c) Any pledge made by the Notes Issuer with respect to its Hotel Development Notes is valid and binding from the time the pledge is made. The money or property so pledged and thereafter received is immediately subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having any claim of any kind in tort, contract or otherwise against the Notes Issuer irrespective of whether the parties have notice. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created is required to be recorded or filed under the provisions of the Uniform Commercial Code to be valid, binding, and effective against the parties.

(d) Pursuant to the authority granted in section 8(b) of the Revised Organic Act of 1954, the principal and interest of Hotel Development Notes issued under this chapter are exempt from taxation by the Government.

SUBCHAPTER 1311 DEFAULT

Section 1311-1. Default

(a) If there is a default in the payment of the principal of or interest on any Hotel Development Notes of a series after the principal or interest becomes due and payable, whether at maturity or upon call for redemption, or if the Notes Issuer or the Government fails or refuses to carry out and perform the terms of any agreement with the holders of any of the Hotel Development Notes, then the holders of the Hotel Development Notes, or the trustee appointed to act on behalf of the holders, may, subject to the provisions of the financing documents, do the following:

- (1) By action, writ, or other proceeding enforce all rights of the holders of the Hotel Development Notes, including the right to require the Notes Issuer to carry out and perform the terms of any agreement with the holders of the Hotel Development Notes or its duties under this chapter;
- (2) By action, petition to enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the Hotel Development Notes; and
- (3) Declare all Hotel Development Notes due and payable, whether in advance of maturity and, if all the defaults be made good, annul the declaration and its consequences.

(b) A default with respect to one Hotel Development Note shall not constitute a default with respect to any other Hotel Development Note unless the Hotel Development Notes by their specific terms provide for such a cross-default to occur.

SUBCHAPTER 1312 ECONOMIC RECOVERY FEE

Section 1312-1. Purpose

The purpose of the Economic Recovery Fee is to encourage and promote the recovery, improvement, and expansion of the Territory's hotel sector.

Section 1312-2. Fee

Developers of hotels located or to be located in the U.S. Virgin Islands may apply for authorization to impose and collect an Economic Recovery Fee to finance, fund, or cover the costs incurred for renovation or reconstruction, construction, improvement, and development of hotel properties and related facilities or infrastructure ("ERF Projects"), subject to the provisions of this chapter. The scope of the facilities and infrastructure that may be financed, funded or covered and authorized pursuant to this section, includes the scope of the facilities and infrastructure described in the definition of Project pursuant to section 1303 of title 29 V.I. Code, chapter 23.

Section 1312-3. Application and Approval

(a) A Developer seeking authorization to impose an Economic Recovery Fee which is being used to secure Hotel Development Notes shall submit an application in accordance with the requirements set forth in 29 V.I.C. § 1306 and shall be considered for approval in accordance with 29 V.I.C. § 1307.

(b) A Developer seeking authorization to impose an Economic Recovery Fee which is not

being used to secure Hotel Development Notes shall submit an application in accordance with the requirements set forth in subparagraph (A) of this paragraph and shall be considered for approval or disapproval in accordance with the procedures set forth in section 1312-4(b).

(1) Any application submitted by a Developer seeking to impose an Economic Recovery Fee which is not being used to secure Hotel Development Notes shall include the following:

(A) A statement of the intention to obtain authorization to assess an Economic Recovery Fee;

(B) The amount of the proposed fee which shall not be greater than the amount set forth in section 1312-7;

(C) Information identifying the applicant, its ownership and corporate structure, and demonstrating its ownership or possessory interest in a hotel property;

(D) The applicant's most recent audited financial statements if the applicant is a new applicant or an applicant that is not a beneficiary in good standing with the Economic Development Program, as set out in title 29 V.I. Code, chapter 12 at the time of its application;

(E) A description in reasonable detail of the plans for the proposed ERF Project including, as applicable: the number of rooms to be constructed or renovated; the approximate square footage of the area(s) to be constructed, reconstructed or renovated; the nature, size, and scope of any amenities or infrastructure to be constructed, reconstructed, or renovated; the general standard of finish sought to be achieved by the construction, reconstruction, or renovation; and a schedule of the timing and phasing of the ERF Project(s); and

(F) The time frame in which the imposition of the Economic Recovery Fee is sought to be imposed, not to exceed 30 years.

Section 1312-4. Economic Recovery Fee Committee and Approval Process

(a) An Economic Recovery Fee Committee ("ERF Committee") is hereby established to review any application submitted pursuant to section 1312-3(b) of this subchapter for approval of the Economic Recovery Fee, and to recommend approval or disapproval of the

application to the Authority. The ERF Committee shall consist of the Commissioner of the Department of Tourism; the Commissioner of the Department of Finance; and a member of the Authority's Governing Board or an appropriate designee, which member or designee shall be selected by the Authority's Governing Board.

(b)

(1) In reviewing an application, the ERF Committee shall:

(A) Determine whether the application contains the information required pursuant to section 1312-3(b) of this subchapter;

(B) Consider the creditworthiness, financial history, and financial stability of the applicant; and

(C) Review the application and recommend approval or disapproval of the application to the Authority no later than 30 days after receipt of the application.

(2) An applicant who is an EDC Beneficiary in good standing shall be presumed to have sufficient creditworthiness, financial history, and financial stability.

(3) If the ERF Committee is unable to reach a consensus on a recommendation, the Committee shall vote, and the majority vote will control.

(4) The ERF Committee shall return the application to the Authority along with the ERF Committee's written recommendation of approval or disapproval.

(c)

(1) Within 30 days following the Authority's receipt of the application and the ERF Committee's recommendation of approval or disapproval pursuant to subsection (b) of this section, the Authority's Board, by majority vote, with a quorum being present, shall vote to approve or disapprove the application. The meeting of the Authority's Board shall be consistent with its bylaws.

(2) If the Board fails to vote within the 30-day period set forth in paragraph (1) of this subsection, the application shall be deemed approved as of the date the 30-day period expires; except that in a force majeure event that prevents the Board from voting during the 30-day period, the Board shall have up to 60 days to vote to approve or disapprove the application.

Section 1312-5. Contractual Agreement

Upon approval of an application pursuant to section 1312-4(c) of this subchapter, the applicant shall be deemed to have entered into a contractual agreement with the Authority to impose an Economic Recovery Fee in the amount set forth in its application, and to perform the ERF Project as described in the application, which may be modified from time to time pursuant to section 1312-6 of this subchapter. The Authority and the applicant shall use their good faith efforts to prepare the terms of a written agreement for execution within a reasonable period of time following the Board's approval.

Section 1312-6. Modification

Following approval of an application pursuant to the provisions of section 1312-3(b) of this subchapter, the applicant may modify the Economic Recovery Fee and/or the ERF Project described in the application only as provided in this subsection.

(a) To increase or decrease the amount of an Economic Recovery Fee, the applicant shall notify the Authority in writing of the change in the amount of the fee, which change shall be consistent with section 1312-7, and which change shall take effect 30 days following the Authority's receipt of the notification.

(b) To modify an approved ERF Project, the applicant shall submit to the Authority a written request to modify the ERF Project, describing in reasonable detail the nature of the modification and the justification for the modification.

(1) Upon receipt of a request to modify the ERF project, the Authority shall forward the modification request to the ERF Committee to determine whether the modification is consistent with the purposes for which the ERF Project was originally approved. The ERF Committee shall recommend approval or disapproval of the modification to the Authority no later than 30 days after receipt of the modification request.

(2) Within 30 days of the Authority's receipt of the ERF Committee's recommendation pursuant to paragraph (b)(1) of this section, the Authority's Board, by majority vote, with a quorum being present, shall vote to approve or disapprove the modification request.

(2) If the Board fails to vote within the 30-day period set forth in paragraph (b)(2) of this section, the modification request shall be deemed approved. However, in the event of a force majeure occurrence, this 30-day period shall be extended to 60 days.

Section 1312-7. Amount of Fee

The amount of the Economic Recovery Fee for any ERF Project shall be the difference between (1) a percentage rate of the Designated Hotel Room Occupancy Tax to be selected by the applicant, which rate, notwithstanding provisions 33 V.I.C. § 54 (b)(1), may be increased up to twenty percent (20%), and (2) the percentage rate of Designated Hotel Room Occupancy Tax established by 33 V.I.C. § 54(b)(l) applicable at the time of the application, provided that such difference may never be greater than seven and a half percent (7.5%).

Section 1312-8. Initiation and Cancellation of Economic Recovery Fee

(a) Prior to assessing or collecting an approved Economic Recovery Fee the applicant shall notify the Authority of the date on which it intends to begin assessing and collecting the Fee, which date shall not be fewer than 60 days following the notification.

(b)

(1) If an applicant requests to stop collecting the Economic Recovery Fee, approved pursuant to section 1312-3(b) of this chapter on a date sooner than what was approved in the application, the applicant must notify the Authority. The applicant's ability to assess an Economic Recovery Fee will cease 30 days following the notification.

(2) An applicant may not request to cease collecting the Economic Recovery Fee approved pursuant to section 1312(c)(1) of this chapter until all Hotel Development Notes secured by the Economic Recovery Fee are paid in full.

Section 1312-9. Notification

Within 30 days of receipt by the Authority of (1) a notification by the applicant pursuant to section 1312-8(a) of this subchapter of its intention to commence assessment of an Economic Recovery Fee, or (2) a notification by the applicant pursuant to section 1312-6(a) of this subchapter of a change in the amount of an Economic Recovery Fee, the Authority shall notify the Virgin Islands Bureau of Internal Revenue of the identity of the applicant, the amount of the Economic Recovery Fee, and the date on which the new or modified Economic Recovery Fee will go into effect.

Section 1312-10. Collection, Calculation and Deposit of the Economic Recovery Fee

(a) Each hotel that is the subject of an approved ERF Project shall include on each guest invoice a separate line item for the Economic Recovery Fee.

(b) The amount of Economic Recovery Fee charged to any hotel guest shall be calculated in the same manner as the amount of Hotel Room Occupancy Tax charged to a guest pursuant to 33 V.I.C. § 54(b)(l).

(c) All Economic Recovery Fee revenues approved pursuant to section 1312-3(b) of this subchapter collected by a hotel shall, upon collection, be separated from Designated Hotel Room Occupancy Tax and the Casino Tax revenues and deposited in the ERF Trust Account established for the Project pursuant to subsection (k) of this section. Economic Recovery Fee revenues, approved pursuant to section 1312-3(a) collected by a hotel shall be applied in accordance with the provisions of subchapter 1308.

Section 1312-11. Creation of Economic Recovery Fee Trust Account

(a) Within 30 days of receipt by the Authority of a notification by the applicant pursuant to section 1312-8 of the applicant's intention to commence assessment of an Economic Recovery Fee approved pursuant to section 1312-3(b), the Authority shall coordinate with the Executive Director of PFA, who shall establish for each approved ERF Project a separate, interest-bearing Economic Recovery Fee Trust Account ("ERF Trust Account") at a financial institution, that is selected by the VIPFA, for the purpose of receiving, holding, and distributing the revenues generated by the ERF Project's Economic Recovery Fee and any Designated Hotel Room Occupancy Taxes and any Designated Casino Tax on Gross Revenue directed by the applicant pursuant to section 1313-1(b). Upon creation of an ERF Trust Account, the VIPFA shall notify the Virgin Islands Bureau of Internal Revenue of the location of the account, the account number, and the identity of the applicant and the ERF Project with which the account is associated. The VIPFA shall maintain the account, and shall not expend, commit to expend or pledge an interest in any of the revenues held in an ERF Project's Trust Account, other than payment of expenses relating to the administration of that ERF Project's Trust Account.

(b) Monies in an ERF Trust Account, upon request by the applicant, may be withdrawn, pledged, encumbered, or otherwise utilized by the applicant solely for purposes directly related to the associated ERF Project including, but not limited to, direct funding of Project expenses, any reconstruction or renovation related expenses, payment of interest and other expenses associated with any financing of the Project, and reimbursement for expenses previously incurred in executing the Project.

(c) If, upon expiration of the Economic Recovery Fee for a particular Project, that Project's ERF Trust Account contains unused Economic Recovery Fee funds, the funds may be used by the applicant solely for other expenditures for improving or enhancing the completed ERF Project, and any such expenditure must be approved in advance by the Authority using the procedure for modifying ERF Projects set forth in section 1312-6.

Section 1312-12. Reporting

On or before March 31st of each year while an Economic Recovery Fee is in effect, each applicant that is a beneficiary of an Economic Recovery Fee shall deliver a report to the Authority describing, in reasonable detail, for the prior calendar year the following information:

- (1) The progress made on any ERF Project or whether the ERF Project has been completed;
- (2) Any material modifications to any ERF Projects or the amount of the Economic Recovery Fee;
- (3) The amount of Economic Recovery Fees charged and collected; and
- (4) The amount of Economic Recovery Fees used to cover costs incurred for the ERF Projects.

Section 1312-13. Violations

An applicant who is determined by the Authority to be in material violation of its Agreement or of the requirements of title 29 V.I. Code, chapter 23 may be subject to a fine not to exceed \$30,000 for each violation, or imprisonment for a period not to exceed 90 days, or both a fine and imprisonment.

Section 1312-14. Sunset

The Economic Recovery Fee shall be available to new applicants whose applications are received prior to December 31, 2028.

**SUBCHAPTER 1313
USE OF REVENUES**

Section 1313-1. Use of Revenues

(a) The revenues generated from the Designated Hotel Room Occupancy Tax, Designated Casino Tax on Gross Revenue, and the Economic Recovery Fee, approved in accordance with section 1312-3 of this chapter, are to be allocated to and deposited into the Project's Fund as follows:

(1) For new hotel development projects where all non-appealable permits for development have not been finalized prior to the effective date of this Act, one hundred percent (100%) of the revenues generated from the Designated Hotel Room Occupancy Tax, Designated Casino Tax on Gross Revenue, and the Economic Recovery Fee, if applicable, shall be allocated to and deposited into the Project's Fund;

(2) For hotel projects where not less than seventy percent (70%) of the units that have not been able to be occupied due to natural events and related effects, or otherwise, fifty percent (50%) of the revenues generated from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue, and one hundred percent (100%) of the revenues generated from the Economic Recovery Fee, if applicable, shall be allocated to and deposited into the Project's Fund; and

(3) For hotel projects that are reconstruction and renovation of existing hotel sites not satisfying the requirements of paragraph (2) of this subsection, one hundred percent (100%) of the revenues generated from the Economic Recovery Fee, and no revenues generated from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue shall be allocated to and deposited into the Project's Fund;

The Authority shall notify the Virgin Islands Bureau of Internal Revenue of the identity of the Project, and the amount or percentage of the Designated Hotel Room Occupancy Tax, Designated Casino Tax on Gross Revenue, and the Economic Recovery Fee, if applicable allocated to be deposited into the Project's Fund.

(b) The revenues generated from the Economic Recovery Fee approved in accordance with section 1312-3(b) of this chapter are to be allocated to and deposited into the ERF Trust Account established under section 1312-11 of this chapter and, at the election of the applicant:

(1) one hundred percent (100%) of the revenue generated from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue for projects pursuant to section 13 13-1(a)(1) of this chapter; and

(2) fifty percent (50%) of the revenue generated from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue for projects under section 1313-1 (a)(2) of this chapter in each case, shall be deposited in such ERF Trust Account.

SUBCHAPTER 1314 ANNUAL PAYMENTS AND PLEDGES

Section 1314-1. Annual Payments and Pledges

(a) Any hotel project that is a beneficiary of the Hotel Development Program shall pay to the Authority an annual fee to be determined by the Authority; provided that the annual fee shall be either (1) one and a half percent (1.5%) of the projected debt service payable that year, or (2) \$100,000 per Project whichever is less. All payments required to be made pursuant to this subchapter shall be made by January 31st of each year.

(b) Any hotel receiving financial assistance or any other incentives under the Hotel Development Program must include, as a part of its self-funded marketing plan, a component to market the Territory, which component must be approved by the Commissioner of Tourism. A copy of the approved marketing plan shall be filed with the Authority within 30 days of approval by the Commissioner of Tourism.

SUBCHAPTER 1315 LIMITATION OF LIABILITY

Section 1315-1. Limitation of Liability

All agreements with the Government, PFA or the Authority under this chapter shall include the following language, or similar language which clearly conveys the provisions below:

(a) Neither the Directors of the Notes Issuer nor any persons executing Hotel Development Notes issued pursuant to this chapter are liable personally on the Hotel Development Notes by reason of the issuance of the Hotel Development Notes.

(b) Notwithstanding any other provision of this chapter, Hotel Development Notes issued pursuant to this chapter are not general obligations of Notes Issuer or the Government and are not in any way a debt or liability of the Government within the meaning of any debt or

other limit prescribed by law. Neither the full faith and credit nor the taxing power of the Government, other than the revenues authorized under this chapter may be pledged to secure the payment of any Hotel Development Notes issued pursuant to this chapter.

SUBCHAPTER 1316 PROJECT FINANCING

Section 1316-1. Project Financing

If a Developer is financing a Project that could be financed with the proceeds of Hotel Development Notes under this chapter and the proceeds of Tax Incremental Financing Bonds (TIF Bonds) issued under the provisions of the Tax Incremental Financing Act, title 29 Virgin Islands Code, chapter 22, the Notes Issuer may, as the issuer of Hotel Development Notes under this chapter, additionally secure its Hotel Development Notes with the tax increment revenues that are authorized to be pledged to the payment of TIF Bonds thereunder as if the Notes Issuer was an authorized issuer of TIF Bonds under the Tax Incremental Financing Act. Conversely, the PFA may additionally secure its TIF Bonds with the revenues that are declared to be dedicated pursuant to this chapter to the payment of debt service on Hotel Development Notes as if the PFA was the Notes Issuer hereunder. If the Notes Issuer is issuing Hotel Development Notes secured in part by tax increment revenues, the applicable provisions of the Tax Increment Financing Act must be satisfied by the Project

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The forgoing Rules and Regulations of the Virgin Islands Economic Development Authority are hereby approved.

Approved:

Date

Kevin A. Rodriguez
Chairman

Pursuant to the powers vested in me by Section 11 of the Revised Organic Act of 1954, the foregoing Rules and Regulations of the Virgin Islands Economic Development Authority are hereby approved.

Approved:

Date

Albert Bryan, Jr.
Governor

CERTIFICATION

Having found compelling circumstances pursuant to 3 V.I.C. § 938, the public interest requires that these Rules and Regulations of the Virgin Islands Economic Development Authority become effective without delay of prior publication. These Rules and Regulations shall become effective upon this ____ day of _____ 2020.

Albert Bryan, Jr.
Governor