MARJORIE RAWLS ROBERTS, P.C.
ATTORNEYS AT LAW

POST OFFICE BOX 6347
ST. THOMAS
U.S. VIRGIN ISLANDS
00804-6347 USA

TELEPHONE: (340) 776-7235
FACSIMILE: (340) 776-7951
EMAIL: JORIE@MARJORIEROBERTSPC.COM
WEB: WWW.MARJORIEROBERTSPC.COM

Statement of Marjorie Rawls Roberts, Esq.

Bill No. 33-0104

Presented to the Committee on Finance

Of the 33rd Legislature of the U.S. Virgin Islands

July 29, 2019

Good Day, the Honorable Kurt A. Vialet, Chair; The Honorable Marvin A. Blyden, Vice Chair; and other Honorable Members of the Committee on Finance of the 33rd Legislature of the U.S. Virgin Islands, other Honorable Members of the 33rd Legislature in attendance, employees of the 33rd Legislature, and others reviewing the critical legislation before the Committee on Finance being heard today:

My name is Marjorie Rawls Roberts, and I am the sole shareholder of the law firm of Marjorie Rawls Roberts, P.C. We are a firm of six attorneys and eight paralegals and administrative staff that is focused on investment, corporate, and tax law, including representing clients (including hotels and prospective hotels located on all three principal islands) before the Economic Development Commission. I appreciate this opportunity to offer my support for Bill No. 33-0104, to underscore the urgency of its passage, and to offer several amendments that I believe will make it a more powerful tool for the reconstruction and renovation of the U.S. Virgin Islands' existing hotel stock.

1. Overview of the Critical Need for New Funding Sources for Hotel Construction, Reconstruction, and Renovation

At the outset, I would like to commend all of the parties who have worked tirelessly to make this bill a reality. The Hotel Development Act ("HDA") was enacted in 2011 as a means of spurring new hotel development in the U.S. Virgin Islands and specifically noted the essential need "for the planning, financing, acquisition, construction, improvement, maintenance and operation of new hotels in the Territory". Notwithstanding the great intent of the legislation, to date, the HDA has not been utilized by developers. I will note that draft Rules and Regulations were prepared in 2013 but never finalized to the best of my knowledge. Given the difficulties in funding hotels in

the U.S. Virgin Islands due to limited on-island financing sources, hurricanes, high construction costs, and lengthy permitting processes, among other factors, it should not come as a surprise that no new hotels have been developed in the U.S. Virgin Islands in over twenty years. Forbes Magazine reported, in a January 4, 2019 article, on "The 10 Most Anticipated New Caribbean Hotels for 2019 and Beyond". The article listed the top 10 new properties as well as more in the pipeline to open in 2019 and beyond – and they are in St. Martin, Puerto Rico, Antigua, Grenada, Jamaica, Bequia, the Dominican Republic, and three in Dominica. Future openings noted by Forbes Magazine are in the Grand Cayman, St. Maarten, Antigua, Belize, and two each in the Turks & Caicos and Cuba. The U.S. Virgin Islands is noticeably absent from these lists of locales of new Caribbean hotels and must take immediate and significant steps to address this situation – and the HDA amendments and introduction of the Economic Recovery Fee are critical steps in this direction.

In the wake of the 2017 hurricane season and the significant damage to the U.S. Virgin Islands' hotel and tourism industry, it is even more imperative that the HDA be revamped in a meaningful way to provide existing hotels with the means of financing much needed renovations and reconstruction, as well as to attract new developers to the U.S. Virgin Islands to add to the Territory's bed base.

It is without question that due to the devastation of the U.S. Virgin Islands' hotels and resorts, the U.S. Virgin Islands has experienced a significant depletion in airlift to and from the Territory. Not only is this impact felt within the tourism sector, but also by residents of the U.S. Virgin Islands who are required to pay exorbitant prices to travel from and back to the Territory – or even within the Territory – and to spend nights in Puerto Rico and Miami in many cases as part of any off-island travel. It is my belief that enactment of Bill No. 33-0104 will assist the Territory in reclaiming its status as the jewel of the Caribbean.

2. Specific Amendments Required to Implement Intended Use of the HDA in Hotel Reconstruction and Renovation

I do have some specific amendments to Bill No. 33-0104 that should be made in order to ensure, as I believe is intended, that hotels that are fronting construction, reconstruction and renovation costs can be reimbursed out of the existing Designated Hotel Room Occupancy Tax and Designated Casino Tax on Gross Revenue as well as out of the proposed Economic Recovery Fee ("ERF").

By way of background, Bill No. 33-0104 adds Section 1312 to Title 29, chapter 23 of the Virgin Islands Code, which provides for the selective imposition of an ERF to finance, fund, or cover the

costs incurred for renovation or reconstruction, construction, improvement, and development of hotel properties and related facilities or infrastructure. This fee is in addition to the Designated Hotel Room Occupancy Tax which can also be used for new hotel development projects (100 percent) and hotel projects where no less than 70 percent of the units have not been able to be occupied due to natural events and related effects (50 percent).

Further, Section 1312, Subsection (c) provides developers seeking authorization to impose an ERF two ways to use the fee, depending on whether the developer will use the fee to secure Hotel Development Notes or not. A developer seeking authorization to impose an ERF to secure Hotel Development Notes must submit an application in accordance with the requirements set forth in Section 1306, which is submitted to the Economic Development Authority and requires among other items a letter of intent from a financial institution and a copy of all documents submitted to the financial institution. A developer seeking authorization to impose the ERF which will not be used to secure Hotel Development Notes must instead submit an application in accordance with the requirements of Section 1312, Subsection (c)(2)(A), which requires a statement of the intention to obtain authorization to assess an ERF, the amount of the proposed ERF, information regarding the application, financial information, a description of the plans for the proposed ERF funding, and the time frame during which the ERF will be imposed (up to thirty years).

Section 1312, Subsection (k) then sets out the procedures for the creation of an ERF Trust Account for those developers that are not using the ERF to secure Hotel Development Notes. Section 1313, Subsection (a) then sets out the use of revenues, and divides the types of projects into three categories: new hotel development projects, hotel projects where no less than 70 percent of the units have not been able to be occupied due to natural events and related effects or otherwise, and finally hotel projects involving the reconstruction and renovation of existing hotel sites where less than 70 percent of the units have not been able to be occupied due to natural events and related effects, or others. The issue is that while developers that are not using the ERF to secure Hotel Development Notes can allocate and deposit the revenues generated from the ERF into the ERF Trust Account, the statute provides that the Designated Casino Tax on Gross Revenue and the Designated Hotel Room Occupancy Tax must still be part of an application under Section 1306, requiring that a Hotel Development Note financing vehicle be in place. This dual track application process would require developers to submit different applications and comply with different requirements while trying to build, reconstruct, or renovate hotels – one for the ERF and one for the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue (which are only available to new hotel development projects and projects where no less than 70% of the units have not been able to be occupied due to natural events and related effects, or otherwise).

We would propose that developers that fall under Section 1312, Subsection (c)(2) be permitted to elect to allocate to and deposit into the ERF Trust Account any revenues generated from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue that are covered by Section 1313, Subsections (a)(1) and (a)(2) as well as the ERF.

We therefore request that Section 1313, Subsection (b) be amended to read as follows:

> (b) The revenues generated from the Economic Recovery Fee approved in accordance with section 1312(c)(2) of this chapter and, at the election of the applicant, 100% of the revenues generated from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue for projects under section 1313(a)(1) of this chapter and 50% of the revenues generated from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue for projects under section 1313(a)(2) of this chapter, are to be allocated to and deposited into the ERF Trust Account established under section 1312(d) of this chapter. [Proposed additional language underscored]

Without this change, by way of illustration, a hotel project where no less than 70% of the units have not been able to be occupied due to natural event and related effects will not be able to obtain reimbursement for its reconstruction or renovation costs out of the existing Designated Hotel Room Occupancy Tax without putting in place a Hotel Development Note financing vehicle. Such a financing vehicle is subject to the existing Economic Development Authority approval process which has not been effectively implemented to date and thus leads to uncertainty for applicants and does not clearly provide a path forward for timely reconstruction. Moreover, while construction of most new hotels would likely involve project-specific financing, developers of new hotels could not rely on the Designated Hotel Room Occupancy Tax to obtain financing due to the uncertainty of the funds from this tax being available since the approval process has never been used to funding. Finally, and as previously noted, it is burdensome to require owners of hotel projects, whether involving new construction, renovations, or reconstruction, to undergo two separate applications and approval processes.

Two additional short amendments are critical in connection with this request, both to Section 1312, Subsection (k). First, Section 1312, Subsection (k)(1), sets out the procedure for the establishment of the separate, interest-bearing ERF Trust Account, for each approved ERF Project at a financial institution selected by the Virgin Islands Public Finance Authority ("VIPFA") for the purpose of receiving, holding, and distributing the revenues generated by the ERF Project's Economic Recovery Fee. Section 1312, Subsection (k)(1) does not discuss the use of such account for the receipt, holding, and distribution of revenues from any Designated Hotel Room Occupancy Taxes

or Designated Casino Tax on Gross Revenues. I respectfully request that the following language be added as underscored:

> (1) Within 30 days of receipt by the Authority of a notification by the applicant pursuant to subsection (h) of this section of the applicant's intention to commence assessment of an Economic Recovery Fee approved under section 1312(c)(2) of this chapter, the Authority shall coordinate with the Executive Director of the Virgin Islands Public Finance Authority ("VIPFA"), who shall establish for each approved ERF Project a separate, interest-bearing Economic Recovery Fee Trust Account ("ERF Trust Account") at a financial institution 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 Designated Casino Tax on Gross Revenue directed by the applicant pursuant to section 1313(b) of this chapter.

Finally, Section 1312, Subsection (k)(2) needs to be revised to provide assurance that applicants will have the ability to obtain the withdrawal, pledge, encumbrance, or other use of the monies in the ERF Trust Account for purposes related to the associated ERF Project. This can be accomplished by the following change to Subsection (k)(2) as underscored:

> (2) 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 including 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.

The afore-discussed three edits will enable applicants that are imposing and collecting the ERF to also tap directly the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue to the extent permitted in Section 1313, Subsection (a) to cover new construction, reconstruction, and renovation costs without having to use a Hotel Development Note financing vehicle. The changes we propose would permit hotel owners that apply for an ERF to allocate and use revenues from the Designated Hotel Room Occupancy Tax and the Designated Casino Tax on Gross Revenue in the same fashion, and subject to the same ERF Committee approval process as will be applicable to allocation, use and approval of the ERF.

****

I am now glad to respond to any questions or comments that you may have. Again, thank you for giving me the opportunity to address the Finance Committee on Bill No. 33-0104.