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

October 27, 2016

The Honorable Neville A. James
President
Thirty-First Legislature of the Virgin Islands
Capitol Building
Charlotte Amalie, St. Thomas
U.S. Virgin Islands 00804

Dear Mr. President:

I am pleased to submit to you proposed legislation, the "Amendments to the Virgin Islands Horse Racing Industry Assistance Act of 2010," together with a comprehensive package of agreements and related documents between the Government of the Virgin Islands ("Government") and VIGL Operations, LLC ("VIGL"), a Virgin Islands limited liability company, which will modernize the horse racing industry in the Virgin Islands and help jump-start sports tourism in the Territory, especially on the island of St. Croix. Pursuant to Section 7 of the Revised Organic Act of 1954, I hereby call the Thirty-First Legislature of the United States Virgin Islands into a Special Session to be held on November 28, 2016 at ten o'clock in the morning for the purpose of considering the enclosed documents and the transactions they embody.

Horse Racing Decline & Proposed Solution

Horse racing has had a storied history in the U.S. Virgin Islands. Unfortunately, the horse racing industry has fallen on hard times across the country, including the U.S. Virgin Islands. During the course of our inquiries, we spoke to racetrack operators and horsemen in the States and learned that to keep the sport alive they are combining casinos with horse racing to improve the deteriorating horse racing facilities and infrastructure. The most successful tracks in the United States have introduced, and now depend on, casino gaming as an additional draw to increase track attendance and as a means to help finance track operations, improvements and maintenance, while increasing race purses and support for horsemen and the betting public.

The Clinton Phipps Racetrack on St. Thomas and the Randall "Doc" James Racetrack on St. Croix are both in a state of serious disrepair, with operators who are either unwilling or unable to invest the necessary capital required to revitalize and operate the racetracks to a standard that the people of the Virgin Islands deserve. Our tracks need significant new capital investment, a minimum number of race days, and larger purses for our horsemen. Without these improvements, we cannot develop sports tourism in the Territory that will attract additional economic opportunities.

My administration has developed a comprehensive approach to address all of the deficiencies of the current situation. We have identified an operator with nationally recognized experience in the horse racing industry who is willing to invest nearly $30 million in private capital to build modern state-of-the-art racetracks and related facilities on both St. Thomas and St. Croix. We negotiated a tough but fair agreement that imposes specific obligations on the new operators in terms of track improvements including:

- Revenue sharing and fees to the Government;
- Minimum number of race days on both St. Thomas and St. Croix;
- Minimum purse sizes;
- Increased training and scholarships for the community;
- Stringent reporting requirements;
- Performance guarantees.

Prior to drafting proposed legislation, we examined horse racing statutes and regulations in several leading horse racing states in order to modernize our regulatory structure and to strengthen the industry. In turn, the proposed legislation will provide a professional infrastructure, which will attract new businesses and also maximize the benefits to our horsemen, the patrons, and the Government.

Accordingly, the comprehensive reorganization I am submitting today also includes amendments to the Virgin Islands Casino and Resort Act to permit "racinos" with limited slot machines at both the St. Thomas and St. Croix racetracks. The legislation substantially increases the gaming fees the Racino operator would pay to the Government. The Legislation also requires contributions to increase purses and for other community purposes.

It is important to recognize that in developing these improvements to our horse racing industry, I have consulted with the Government's other gaming partners in the Territory. The owners of the Divi Carina Bay Casino fully cooperated with this transition, and will remain active in operating the St. Croix Racino for several years during the new operator's construction phase. I thank the Divi personnel for their cooperation and assistance. I have also met with the Government's partner in Video Lottery Terminals (VLTs), Southland Gaming, whose president personally assured me that he anticipates that the new St. Thomas Racino will have very little impact on Southland's VLT business on St. Thomas.

Amendments to the VI Horse Racing Industry Assistance Act of 2010

First, the proposed bill would streamline the regulatory structure by consolidating the two existing District Commissions and establishing one commission within the Department of Sports, Parks and Recreation, called the Virgin Islands Horse Racing Commission ("Commission"). The Commission would be composed of nine voting members, with four from St. Croix and four from St. Thomas-St. John (with one member from St. John), each appointed by the Governor, and the Commissioner of Sports, Parks and Recreation as the ninth member. The amendments enhance the Commission's regulatory powers and implement much needed conflict of interest rules. In order to attract the best candidates, the amendments increase the stipend for each Commission member to $500 for each race day.

The proposed bill would also authorize the Governor to award a Franchise Agreement to a racetrack operator for a term up to 20 years to any eligible individual, partnership, organization, association, corporation or other entity to promote and conduct horse racing and related activities at the Clinton Phipps Racetrack on St. Thomas and the Randall "Doc" James Racetrack on St. Croix, subject to the approval of the Legislature. The racetrack operator would be subject to tough new disclosure requirements to ensure greater transparency and prevent potential conflicts of interest. The license would also terminate if there were a substantial change of ownership without Commission approval. The bill would also require the racetrack operator to comply with best practices in the horse racing industry, including compliance with federal and local anti-doping rules, to ensure that horse races in the Virgin Islands are conducted safely and with integrity.

Importantly, the bill would also amend the casino statute to allow the holder of a valid horse racing license to operate a casino at the horse track on St. Thomas and St. Croix, except that gaming at the racetracks would be limited to slot machines operated by an entity with a valid casino license. In order to avoid competition with other casinos and Video Lottery Terminal ("VLT") operators, the Racinos would be limited to 200 slot machines on each island.

The bill would also increase the casino fees from 19 ¼% to 25% — which would be paid into a separate and distinct special fund called the "Horse Racetrack Casino Revenue Fund." This nearly 30% increase in casino fees would be distributed from the fund as follows:

- 50% to the General Fund of the Virgin Islands Treasury;
- 30% to the respective horsemen's associations in both island districts, evenly divided;
- 3% to a newly established Thoroughbred Fund for use in the Certified Thoroughbred Program to improve facilities and breeding stock in the horse racing industry;

- 3% to a newly established Hospitality Fund for hospitality training in the tourism industry;

- 4% to the Agriculture Revolving Fund established and administered pursuant to 33 V.I.C. §3018, for the purchase and cultivation of fresh fruits and vegetables for consumption within the Territory;

- 2% to the Virgin Islands Horse Racing Commission for administrative functions and expenses;

- 5% to the Department of Sports, Parks and Recreation for the development of youth sports activities in the Territory; and,

- 3% to the Virgin Islands Olympic Committee for the funding of athletes and national teams to represent the Virgin Islands in national and regional competitions.

This proposed legislation evidences my administration's commitment to revitalizing and improving the horse racing industry in the Territory. It also serves as the catalyst for the sound development of a sports tourism industry in the Territory which will benefit the people of the Virgin Islands for many years to come.

Agreement with VIGL Operations LLC

In addition to the proposed amendments, the Franchise Agreement between VIGL Operations, LLC and the Government of the Virgin Islands is attached. VIGL is a Virgin Islands limited liability company that presently operates the renovated Caravelle Hotel & Casino in Christiansted, which has been thoroughly vetted and licensed by the Casino Control Commission. VIGL's parent company plans, designs, and operates casinos and other entertainment venues in Illinois and Louisiana. For the racetrack project, VIGL has enlisted a team of highly credentialed and experienced horse racing and betting experts to ensure that the two racetracks are built, renovated and operated to meet the highest standards of the horse racing industry.

The Franchise Agreement provides for a 20-year exclusive concession in the Territory for live horse racing, telephonic account betting, and simulcast wagering, and the right of use of all of the facilities and equipment at the St. Thomas and St. Croix racetracks. The effective date of the Franchise Agreement is subject to several conditions precedent, including (among other things) approval by the Legislature; receipt by VIGL of a racino gaming license awarded by the Casino Control Commission; execution of racing agreements between VIGL and the horsemen's organizations on St. Thomas and St. Croix; and termination of existing racing agreements.

The Franchise Agreement is comprehensive. Its material provisions can be broken down into seven broad categories: (1) minimum capital investments and construction projects; (2) ongoing fees and payments; (3) racing and purse requirements; (4) charitable contributions, training, and scholarships; (5) financial protections and remedies; (6) reporting and audit requirements; and (7) termination, renewal, and transfer provisions.

1. **Capital Investment and Construction:**

Once it becomes effective, the Franchise Agreement requires VIGL to make large up-front investments of not less than $27 million for the improvement and expansion of the two racetracks. That $27 million will be allocated as follows: $14 million to the St. Croix track, $12 million to the St. Thomas track (including $2 million for the purchase of the 12.8 acre Lima Property adjacent to the track), and $1 million to a reserve fund.

Within 30 days of the effective date, VIGL must present to the Government a project management plan setting forth in detail its specific plans for investing that money to restore, improve, and enhance the racetracks. The Government has the right to review and approve that plan. Once the plan is approved, VIGL's implementation must begin immediately and be (1) not less than 40% complete within 24 months of approval, and (2) substantially complete within 42 months of approval. Failure to achieve those deadlines is deemed a breach of the Agreement.

The specific projects required by the Agreement include the construction of new "Racing Entertainment Centers" at both tracks, which will include improved grandstands, a live betting parlor, slot machines, luxury suites, betting facilities, dining establishments, bars and lounges, picnic/tent areas, and kiosks for use by local vendors on race days. In addition, VIGL will undertake significant construction and improvement of the racing facilities themselves, including building new horse barns, new quarantine barns, new veterinary facilities, and new locker rooms for jockeys. The racing ovals will be completely resurfaced, and VIGL will supply them with new video screens, new starting chutes, and new watering equipment. The end result will be two racetracks renovated to premiere standards—standards sufficient to attract quality racehorses both from within and from outside the Territory.

2. **Taxes, Fees and Payments:**

VIGL is obligated to pay full taxes and all permit and other fees, except as otherwise provided by statute. Specifically, 33 V.I.C. §§205(b), 206, and 208 provide that in lieu of gross receipts tax, a franchisee pays to the Government four percent (4%) of its pari-mutuel take, 4% of its simulcasting take, and two percent (2%) of its off-track betting take. VIGL is also obligated to pay statutory casino fees, which will be increased under the legislation presented simultaneously with the Agreement.

In addition, VIGL is required to make a variety of payments during the term of the Agreement, including license fees of $20,000 annually; franchise fees that begin at $10,000 annually for the first three years, then rise to $25,000 annually for the fourth and fifth years, and rise to $50,000 annually thereafter; maintenance fees in the amount of four percent (4%) of the annual gross racino revenues; and, under separate lease agreements, rent of $108,000 annually for the St. Croix track and $24,000 annually for the St. Thomas track (the lower annual rent for St.

Thomas reflecting the additional cost to VIGL of purchasing the 12.8-acre Lima property adjacent to the racetrack), in each case subject to an annual increase of five percent (5%). In addition, VIGL will subsidize the operating expenses of the Virgin Islands Horse Racing Commission such that the Commission will be guaranteed funding (from all source) of not less than $450,000 annually.

3. **Racing and Purse Requirements:**

For the first three years, VIGL must hold a minimum aggregate total of 18 live races; thereafter, it must hold a minimum aggregate total of 24 live races. The purse for each race day at each racetrack must be at least $100,000, and the total purse value for a given year must be at least $2 million for years 1-3; $2.5 million for years 4-6; and $3 million for each year thereafter. To the extent the purses for a given year exceed those minimum amounts; VIGL must contribute an amount equal to the excess to the purses for the following year. That is, Year 2 has a minimum annual purse amount of $2 million. If VIGL distributes purses for that year of $2.6 million, then the minimum purse for the following year will be increased by $600,000. The purse amounts are subject to a reset after 9 years.

4. **Charity, Training, and Scholarships:**

VIGL must make three $1000 donations to charities on each live race day, for a minimum aggregate donation of $54,000 in each of the first three years and $72,000 in the fourth year. Thereafter, the minimum annual donation amount will rise by ten percent (10%) annually until it is capped at $150,000. The selected charities will be given space at the racetracks on each live race day to conduct charitable activities.

VIGL is also required to develop training programs for its employees and interested students at the University of the Virgin Islands, and to fund a scholarship program for two or more individuals to study a discipline relevant to horse racing. The scholarship program will be jointly developed and administered by VIGL and the Horse Racing Commission, with input from the St. Thomas and St. Croix horsemen's organizations. The amount expended for training and scholarships will initially be not less than $20,000 annually, with the minimum increasing fifteen percent (15%) per year to a maximum requirement of $100,000.

5. **Financial Protections and Remedies:**

To ensure that VIGL performs its obligations under the Agreement, the Government insisted upon several protective measures. First, VIGL must post a performance bond in the amount of $25 million, against which the Government can claim if VIGL fails to perform its construction and renovation obligations. The amount of the bond will be reduced by the amount of money spent on each completed project, but will never fall below $1 million.

Second, in the event VIGL breaches its contractual obligations and fails to timely cure the breach, the Government may elect any of several available legal remedies, including an order

<u>Leases/Subleases</u>

Because the racetracks are owned by the Department of Property and Procurement (acting on behalf of the Department of Sports, Parks, and Recreation), VIGL's use and occupancy of the facilities require lease agreements with that agency. The two leases do not require separate approval by the Legislature, but are submitted as appendices to the Agreement.

The St. Croix lease is styled as a "Sub-Lease," because there is already a Master Lease governing the property. The St. Thomas lease is simply a lease. Otherwise, the two documents are substantially identical. The primary difference is the annual rent: $108,000 for the St. Croix facility and $24,000 for the St. Thomas facility, in each case increasing by five percent (5%) annually. The lower rent for the St. Thomas facility—a $1.7 million value over the 20-year term, exclusive of the annual five percent (5%) increases —reflects the approximately $2 million VIGL has already spent to acquire the adjacent Lima property, which will become an integral part of the St. Thomas racetrack grounds and will revert to the Government with the rest of the facility upon expiration of the Franchise Agreement (except in the case of early termination of the Agreement by the Government).

<u>Traxco Issue and Settlement</u>

A condition precedent for the new Agreement is the termination of the existing Agreement held by Traxco, Inc. for the St. Croix racetrack which is the subject of ongoing litigation between Traxco and the Government. The Government, Traxco, and VIGL have reached an agreement pursuant to which Traxco will settle its litigation with the Government and renounce any claim to operate the St. Croix racetrack in exchange for (1) the right of its parent, Treasure Bay VI Corp. ("TBVI") to operate a racino on the racetrack premises until the VIGL Agreement is approved and VIGL receives the licenses and permits necessary to begin racino operations, (2) statutory amendments permitting a temporary reduction in TBVI's gross receipts tax rate from twelve percent (12%) to eight percent (8%), and (3) certain payments from VIGL. The end result for the Government will be the elimination of the Traxco litigation, the substitution of a new, experienced operator with deep pockets and contractual commitments to make large investments in the Territory, which will improve and professionalize the Virgin Islands horse racing industry and attract new business.

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I look forward to working with you and the Members of the 31st Legislature to approve the entire package provided herein for the benefit for the Government, our horse racing industry, and our community.

Sincerely,

Kenneth E. Mapp
Governor

Enclosures