

**TWENTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS**

Territory of the Virgin Islands  
REGULAR/SPECIAL SESSION 19 99  
ROLL CALL

Bill No. 23-0192

Short Title: To execute an Agreement between the Government of the Virgin Islands and Timothy Duncan and T.D. Enterprises, Inc.

Date: 12/14/99

**LEGISLATIVE HISTORY**

- (a) Introduced and sent to Committee on.....Date.....
- (b) Reported from Committee and sent to Rules on.....
- (c) Reported from Committee on Rules.....
- (d) Recalled from Committee by Special Order.....
- (e) Adopted on.....
- (f) Rejected on.....
- (g) Vetoed by Governor on.....
- (h) Reconsidered by Legislature and passed or rejected over Governor's Veto on.....

*Approved*  
12/14/99

| MEMBERS                   | YEA | NAY | NOT VOTING | ABSENT |
|---------------------------|-----|-----|------------|--------|
| BENNERSON, Gregory A.     | 1   |     |            |        |
| BERRY, Lorraine L.        | 2   |     |            |        |
| BRYAN, Adelbert M.        | 3   |     |            |        |
| COLE, Donald "Ducks"      | 4   |     |            |        |
| DAVID, Roosevelt St. C.   | 5   |     |            |        |
| DONASTORG, Adlah "Foncie" | 6   |     |            |        |
| GOLDEN, Violet Anne       | 7   |     |            |        |
| GOMEZ, Judy M.            | 8   |     |            |        |
| GOODWIN, George E.        | 9   |     |            |        |
| HANSEN, Alicia "Chucky"   |     |     |            |        |
| JN. BAPTISTE, Norman      |     |     |            | 1      |
| JONES, David S.           | 10  |     |            |        |
| LIBURD, Almando "Rocky"   | 11  |     |            |        |
| PETRUS, Allie-Allison     | 12  |     |            |        |
| RICHARDS Vargrave A.      | 13  |     |            |        |
|                           | 14  |     |            |        |

*Glennia M. Oteite*  
Certified true and correct  
CLERK

**BILL NO. 23-0192****Twenty-Third Legislature of the Virgin Islands  
of the United States****NOVEMBER 10, 1999**

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To authorize the Governor of the Virgin Islands to execute an Agreement between the Government of the Virgin Islands and Timothy Duncan and T.D. Enterprises, Inc. relating to the promotion of the United States Virgin Islands by Timothy Duncan and the establishment of promotional and related business activities by T.D. Enterprises, Inc.

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**PROPOSED BY:** Senator Vargrave A. Richards

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BE IT ENACTED by the Legislature of the Virgin Islands:

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SECTION 1. The Legislature of the Virgin Islands hereby finds and declares that

**4**

it is in the best interest of the people of the Virgin Islands and the Virgin Islands

**5**

economy to engage the assistance of Timothy Duncan in the promotion of the United

**6**

States Virgin Islands as a recognized tourist destination as well as to attract Timothy

**7****8**

Duncan to locate certain developing business enterprises in the Virgin Islands.

**9****10**

SECTION 2. The Legislature hereby ratifies the Agreement executed by the Governor on behalf of the Government of the Virgin Islands and appended hereto as Appendix A, with Timothy Duncan and T.D. Enterprises, Inc., a corporation wholly owned by Timothy Duncan. The terms of said Agreement are incorporated herein by reference and specifically made a part of this Act.

BR. No. 99-0787 / April 26, 1999 / :lb

TWENTY-THIRD LEGISLATURE OF THE VIRGIN ISLANDS  
OF THE UNITED STATES

REGULAR SESSION 1999

TO AUTHORIZE THE GOVERNOR OF THE VIRGIN ISLANDS TO EXECUTE AN  
AGREEMENT BETWEEN THE GOVERNMENT OF THE VIRGIN ISLANDS AND  
TIMOTHY DUNCAN AND T.D. ENTERPRISES, INC. RELATING TO THE  
PROMOTION OF THE UNITED STATES VIRGIN ISLANDS BY TIMOTHY DUNCAN  
AND THE ESTABLISHMENT OF PROMOTIONAL AND RELATED BUSINESS  
ACTIVITIES BY T.D. ENTERPRISES, INC.

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Be it enacted by the Legislature of the Virgin Islands:

Section 1. The Legislature of the U.S. Virgin Islands hereby finds and declares that it is in the best interest of the people of the U.S. Virgin Islands and the U.S. Virgin Islands economy to engage the assistance of Timothy Duncan in the promotion of the United States Virgin Islands as a recognized tourist destination as well as to attract Timothy Duncan to locate certain developing business enterprises in the U.S. Virgin Islands.

Section 2. In order to achieve the purposes set forth in Section 1, the Governor of the U.S. Virgin Islands on behalf of the Government of the U.S. Virgin Islands is authorized and empowered to execute an Agreement, in the form and substance attached hereto as Appendix A, with Timothy Duncan and T.D. Enterprises, Inc., a corporation wholly owned by Timothy Duncan. The terms of said Agreement are incorporated herein by reference and specifically made a part of this Act. In this regard, the Governor of the U.S. Virgin Islands is authorized to do all acts required to consummate this Agreement on behalf of the Government of the U.S. Virgin Islands under the terms and provisions of the laws of the U.S. Virgin Islands and the Agreement as described in Appendix A.

Thus passed by the Legislature of the U.S. Virgin Islands on November 1, 1999.

Witness our Hands and the Seal of the Legislature of the U.S. Virgin Islands this \_\_\_\_\_ day of November, A.D., 1999.

VARGRAVE RICHARDS  
President

ROOSEVELT ST. C. DAVID  
Legislative Secretary

The above bill is hereby approved.

Witness my hand and the Seal of the Government  
of the United States Virgin Islands at Charlotte  
Amalie, St. Thomas, this \_\_\_\_\_ day of November, 1999.

CHARLES W. TURNBULL  
Governor

## APPENDIX A

### AGREEMENT BETWEEN THE GOVERNMENT OF THE U.S. VIRGIN ISLANDS AND TIMOTHY DUNCAN AND T.D. ENTERPRISES, INC. RELATING TO THE PROMOTION OF THE UNITED STATES VIRGIN ISLANDS BY TIMOTHY DUNCAN AND THE ESTABLISHMENT OF PROMOTIONAL AND RELATED BUSINESS ACTIVITIES BY T.D. ENTERPRISES, INC. IN THE VIRGIN ISLANDS

This Agreement is hereby entered into by and between the GOVERNMENT OF THE U.S. VIRGIN ISLANDS( hereinafter referred to as GOVERNMENT) and Timothy Duncan and T.D. ENTERPRISES, INC., a U.S. Virgin Islands Corporation, wherein the parties agree as follows:

WHEREAS, it is the policy of the Government to promote the economic and social well being of the people of the U.S. Virgin Islands; and

WHEREAS, it is in the best interest of the U.S. Virgin Islands to develop tourism through the promotion of the U.S. Virgin Islands in the most beneficial manner possible; and

WHEREAS, Timothy Duncan, a native Virgin Islander, is a nationally recognized personality whose official public endorsement would be a valuable contribution TO the promotion of the U.S. Virgin Islands; and

WHEREAS, Timothy Duncan has formed a U.S. Virgin Islands corporation, T.D. Enterprises, Inc., to engage in the establishment of certain business enterprises whose location within the U.S. Virgin Islands would be beneficial to the people of the U.S. Virgin Islands:

IT IS THEREFORE AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

#### I. PROMOTION OF THE U.S. VIRGIN ISLANDS

Pursuant to the terms hereof, Timothy Duncan and T.D. Enterprises, Inc. agrees to make Timothy Duncan available to work with the Government, through the Department of Tourism or any other agency designated by the Governor, to do three official advertisements per year, if requested by the Government to do so, for the promotion of the U.S. Virgin Islands as a tourist destination for 15 years from the date of the execution of this Agreement which appearances and/or endorsements

shall be at no cost to the Government. The Government shall use its best efforts to limit the need for Timothy Duncan's services to no more than three (3) consecutive days in any calendar year of the Term (the "Production Days") and no such Production Day shall exceed five (5) hours in length. The Government shall give Timothy Duncan and T.D. Enterprises, Inc. no less than sixty (60) days advance notice of the dates of any desired Production Days, which dates shall be subject to Timothy Duncan's prior professional basketball commitments. All advertisements; appearances and/or endorsements requested by the Government pursuant to this Agreement shall be subject to the prior approval of T.D. Enterprises, Inc. and Timothy Duncan, which approval shall not be unreasonably withheld. Once such advertisements, appearances and/or endorsements are approved by T.D. Enterprises, Inc. and Timothy Duncan pursuant to the terms hereof, the Government may not depart from the approved form in any manner without first obtaining the prior approval of T.D. Enterprises, Inc. and Timothy Duncan.

## II. DEVELOPMENT OF BUSINESS ENTERPRISES

T.D. Enterprises, Inc., a U.S. Virgin Islands corporation, intends to conduct various business activities, including, but not limited to, the commercial promotion of endorsing products and engaging in other business and financial activities. This corporation shall be permitted to engage in any business activity permitted by law, except for casino gaming as authorized in 32 V.I.C. §401 *et seq.*, off-track betting, lottery, or any other gaming/gambling which may hereinafter be permitted by law (collectively referred to as "gaming activities") and shall be granted tax exemptions as set forth herein for all such activities other than gaming activities.

## III. TERM

This Agreement shall be in full force and effect for a period of 15 years commencing November 1, 1999.

#### IV. TAX EXEMPTIONS

T.D. Enterprises, Inc. shall, unless otherwise stated, receive a 100% tax exemption during the Term for the following taxes:

- a. All income taxes including any and all income surtaxes;
- b. All gross receipts taxes to the same extent as provided by 29 V.I.C. §713a(a)(2);
- c. All real property taxes on real property acquired by the corporation for the operation of the T.D. Enterprises, Inc. executive/financial headquarters (one location), promotional/merchandising outlet (two locations maximum) and/or a sports bar (two locations maximum) used exclusively for the operation of T.D. Enterprises, Inc. should the corporation choose to conduct such activities;
- d. all excise taxes as provided by 29 V.I.C. §713a(a)(3) and customs duties on raw materials and component parts brought into the United States Virgin Islands by T.D. Enterprises, Inc. for the purpose of producing, creating or assembling an article, good or commodity as a result of the business activities of T.D. Enterprises, Inc.; and

Further, during the Term of this agreement, all distributions by T.D. Enterprises, Inc., whether in the form of dividends or otherwise, to its shareholders shall be exempt from any and all personal income tax liability, so long as said shareholders are residents of the U.S. Virgin Islands, provided, however, that not more than six (6) of its eligible shareholders shall receive such benefit.

Notwithstanding the foregoing exemptions, the maximum amount of income tax exemption available to T.D. Enterprises, Inc. ("Maximum Tax Exemption") for income taxes due shall be

limited by a multiple of the actual income taxes paid by Tim Duncan (or a by a trust of which Tim Duncan is the primary beneficiary of 75% or more of the trust benefits) to the Government of the U.S. Virgin Islands during the term of this Agreement. This multiple shall apply as follows:

| <u>Years</u> | <u>Amount of Multiple</u> |
|--------------|---------------------------|
| 1999-2000    | 1.50                      |
| 2001-2002    | 1.75                      |
| 2003-2014    | 2.00                      |

To the extent that the Maximum Tax Exemption in any given year is greater than the income tax exemption utilized by T.D. Enterprises, Inc. for the same year, then the excess amount of the maximum Tax Exemption over the income tax exemption utilized by T.D. Enterprises, Inc. shall be carried forward as a cumulative credit toward the amount of income tax exemptions available for T.D. Enterprises, Inc. during the term of this Agreement.

#### V. PURPOSE AND INTENT

This Agreement, including the legislative approval thereof, reflects such adaptations of Chapter 12 of Title 29 of the U.S. Virgin Islands Code (Industrial Development Program) as have been deemed by the Government as appropriate and consistent with the public interest, taking into account the nature and scope of the proposed undertakings of T.D. Enterprises, Inc. The Government will issue necessary exemption certificates as from time to time will be required by T.D. Enterprises, Inc. As the terms and provisions of this agreement are contractual and proprietary in nature, it is understood and expressly declared that the Government will not adopt any legislation to contradict, impair or negate the terms hereof.

Further, no independent agency, board or other instrumentality of the Government or any Government agency as that term is defined in Title 1, Chapter 15, Section 253(b) of the U.S. Virgin Islands Code will promulgate any rule, regulation, decision, determination, order or other assessment

that will in any way negate, restrict, impair, offset, limit or otherwise affect the obligations of this Agreement or the tax benefits to be derived therefrom by T.D. Enterprises, Inc. Should any law of the United States or any decision of any court of the Territory of the Virgin Islands or of the United States have the effect of negating, restricting, impairing, offsetting or limiting the terms of this Agreement, to the extent permitted by law, subsequent legislation will be submitted by the Governor to the Legislature to reestablish and to reconfirm the terms of this Agreement.

It is further acknowledged and agreed that to induce Timothy Duncan to maintain his residency in the U.S. Virgin Islands, the Government agrees that while Timothy Duncan will pay full income tax on his income derived from sources other than T.D. Enterprises, Inc., the Government will not assess any income tax rate on Timothy Duncan in excess of the federal income tax rate he would pay for the tax year in question had he been a resident of the United States rather than the U.S. Virgin Islands.

#### VI. NOTICES

All notices and required communications between the parties shall be delivered in writing by hand or any form of mail for which delivery can be certified or otherwise confirmed as follows:

To: The Government:  
Office of the Governor  
The Government of the U.S. Virgin Islands  
Government House  
St. Thomas, USVI 00802

Timothy Duncan and T.D. Enterprises, Inc.  
% Joel H. Holt, Esq.  
Holt & Russell  
2132 Company Street, Suite 2  
Christiansted, VI 00820

with copies to:

Lon S. Babby, Esq.  
Williams & Connolly  
725 12<sup>th</sup> St., NW  
Washington, DC 20005

Leland H. Faust, Esq.  
Taylor & Faust  
445 Bush St., 5<sup>th</sup> Floor  
San Francisco, CA 94108-3725

Any party may change the forgoing designation from time to time as needed and must be done in writing and acknowledged by the other party.

#### **VII. ENTIRETY OF AGREEMENT**

This Agreement constitutes the entire agreement of the parties. It is intended that neither party shall have or be deemed to have any obligation under this Agreement except as the same shall be explicitly stated herein.

#### **VIII. BREACH OF AGREEMENT**

The Government shall notify Timothy Duncan and T.D. Enterprises, Inc. upon breach of any material aspect of the Agreement. Upon written notice of such breach from the Government to Timothy Duncan and T.D. Enterprises, Inc. pursuant to the terms hereof, Timothy Duncan and T.D. Enterprises, Inc. shall be afforded a thirty (30) day period to cure such breach. If Timothy Duncan and/or T.D. Enterprises, Inc. fail to take the necessary steps to arrange for the cure of any substantial breach of this Agreement (other than a breach of Section IX hereof) on or before the end of the cure period, then this Agreement shall be a nullity as of the date of the breach, unless either party has invoked its rights under the dispute resolution clause set forth in Section XI, in which case the tax benefits shall continue until resolution of the dispute. If it is determined that Timothy Duncan and T.D. Enterprises, Inc. have breached the agreement, it shall forfeit all future rights and benefits under this Agreement and shall be fully responsible for all taxes, including interest and penalties from the

date of the breach, provided, however, that Timothy Duncan and T.D. Enterprises, Inc. shall not have any further obligations pursuant to Section I hereof following such breach.

#### IX. OTHER OBLIGATIONS

At all times during the life of this Agreement and the term of the tax exemptions, T.D. Enterprises, Inc. shall comply with all laws and regulations of the U.S. Virgin Islands applicable to said corporation and shall remain in good standing and current on all non-exempt taxes, licenses, fees or assessments of any and all types and descriptions, imposed by the Government or its instrumentalities. Upon notice by the Government of any breach of the obligations under Section IX, T.D. Enterprises shall use its best efforts to cure such breach within 30 days, provided, however, that failure to cure such breach shall not nullify this Agreement. Any dispute under Section IX shall not be subject to the provisions of Section VIII.

#### X. FORCE MAJEURE

Any failure or delay in performance by either party hereto of its obligations hereunder shall not be a breach of this Agreement if such delay arises out of or results from causes beyond such party's control. These causes shall include fire, storm, flood, earthquake, explosion, major catastrophe, acts of a public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine, labor disputes, shortages of materials or supplies, transportation embargoes, failures or delays in transportation, acts of God, laws, rules regulations, orders or directives of the federal Government or the order of any court of competent jurisdiction.

#### XI. DISPUTES

Any dispute between the parties hereto as to the interpretation or effect of this Agreement (which shall include for the purposes of this Agreement, any subsequent modification thereof unless otherwise expressly provided by such modification) and any controversy between them or claim by either of them, whether sounding in tort or contract, arising out of or relating to this Agreement or the conduct of the parties hereto, their agents and/or representatives, may during the period of tax exemptions provided for herein and one year thereafter, notwithstanding the Government's status

as such and in the same manner as similar actions, suits or proceedings to which the Government is not a party, be the subject of either or both of the following:

- a. an action, suit or proceeding brought by either party, including a proceeding under Chapter 89 of Title 5 of the Virgin Islands Code, brought and maintained in the Territorial Court of the U.S. Virgin Islands.
- b. if Timothy Duncan and T.D. Enterprises, Inc. or its designee and the Government in the person of the Governor of the U.S. Virgin Islands or his designee so agree, an arbitration proceeding or other form of alternate dispute resolution either binding or non-binding as agreed upon by the parties.

## **XII. EMPLOYMENT OF U.S. VIRGIN ISLANDS RESIDENTS**

To the maximum extent possible, T.D. Enterprises, Inc. and Tim Duncan shall employ U.S. Virgin Islands residents in their business activities in the U.S. Virgin Islands.

## **XIII. SECTION HEADINGS**

The headings of the various sections of this Agreement are inserted for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

## **XIV. JURISDICTION AND VENUE**

This Agreement shall be governed by the laws of the U.S. Virgin Islands and jurisdiction over any disputes arising under this Agreement and venue of such disputes shall be in the U.S. Virgin Islands in any court of competent jurisdiction.

## **XV. NON-DISCRIMINATION**

Tim Duncan and T.D. Enterprises, Inc. agree to abide by all laws of the U.S. Virgin Islands and the United States pertaining to the civil rights of individuals and shall not discriminate against any individual on the basis of race, sex, color, disability, national origin or religion.

## **XVI. ASSIGNMENT**

Tim Duncan and T.D. Enterprises, Inc. shall not subcontract or assign any part of this Agreement without the prior written consent of the Government and the approval of the Legislature.

## **XVII. CONFLICT OF INTEREST**

(a) Tim Duncan and T.D. Enterprises, Inc. covenant that neither they nor any of their partners and/or shareholders have any interest and will not acquire any interest, whether direct or indirect, which would conflict in any manner or degree with the performance of the services required to be performed under the contract.

(b) Tim Duncan and T.D. Enterprises, Inc. further covenant that they (including their partners and/or shareholders):

(1) are not territorial officers or employees (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected Territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board commission or independent instrumentality of the Government, whether compensated on a salary fee or contractual basis).

## **XVIII. ENTIRE AGREEMENT; SUBSEQUENT AMENDMENTS**

This Agreement constitutes the entire agreement of the parties and the provisions herein shall supersede any and all prior agreements or understandings relating to the same subject matter. It is intended that neither party shall have or be deemed to have any obligation under this Agreement except as the same shall be explicitly stated herein. If any clause, sentence, section or part of this Agreement or the application thereof to anyone in any circumstances is declared invalid, the application thereof to others or other circumstances, and the remainder of this Agreement, shall not be affected thereby. In the event of any such holding and to the extent of any such invalidity, the Government undertakes, insofar as it may lawfully do so, to take such alternative steps (including the consent to or enactment of legislation and the consent to or promulgation of rules and regulations) as may reasonably and in good faith be required to confer upon the parties benefits

comparable in character and substantially equivalent in amounts to those intended to be conferred by this Agreement, on terms and conditions not materially more burdensome to either party than those herein provided and without prejudice to any other remedies that may be available to either of them.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed and delivered this Agreement, as of the 29 day of September, 1999.

THE GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES

BY: Charles W. Turnbull  
CHARLES W. TURNBULL, GOVERNOR

[Signature]  
TIMOTHY DUNCAN

T.D. ENTERPRISES, INC.  
(a Virgin Islands Corporation)

(Seal)

BY: [Signature]  
TIMOTHY DUNCAN

[Signature]  
Assistant Secretary

APPROVED FOR LEGAL SUFFICIENCY:

BY: [Signature]  
IVER STRIDIRON, ATTORNEY GENERAL

comparable in character and substantially equivalent in amounts to those intended to be conferred by this Agreement, on terms and conditions not materially more burdensome to either party than those herein provided and without prejudice to any other remedies that may be available to either of them.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed and delivered this Agreement, as of the 24 day of September, 1999.

THE GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES

BY: Charles W. Turnbull  
CHARLES W. TURNBULL, GOVERNOR

[Signature]  
TIMOTHY DUNCAN

T.D. ENTERPRISES, INC.  
(a Virgin Islands Corporation)

(Seal)

BY: [Signature]  
TIMOTHY DUNCAN

[Signature]  
Assistant Secretary

APPROVED FOR LEGAL SUFFICIENCY:

BY: [Signature]  
IVER STRIDIRON, ATTORNEY GENERAL