

In the opinion of Hawkins Delafield & Wood LLP, Bond Counsel to the Virgin Islands Public Finance Authority (the “Authority”), under existing statutes and court decisions and assuming continuing compliance with certain tax covenants described herein, (i) interest on the Revenue and Refunding Bonds (Virgin Islands Matching Fund Loan Notes), Series 2009A-1 (Senior Lien/Capital Projects/Tax Exempt) (the “Series 2009A-1 Bonds”), Series 2009B (Senior Lien/Refunding) (the “Series 2009B Bonds”) and 2009C (Subordinate Lien/Refunding) (the “Series 2009C Bonds”) are excluded from gross income for Federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), (ii) interest on the Series 2009A-1 Bonds, the Series 2009B Bonds and the Series 2009C Bonds is not treated as a preference item in calculating the alternative minimum tax imposed on individuals and corporations under the Code, (iii) (a) interest on the Series 2009A-1 Bonds is not included in the adjusted current earnings of corporations for purposes of calculating the alternative minimum tax and (b) interest on the Series 2009B Bonds and the Series 2009C Bonds, however, is included in the adjusted current earnings of certain corporations for purposes of calculating the alternative minimum tax imposed on such corporations. In addition, in the opinion of Bond Counsel to the Authority, under existing statutes, interest on the Series 2009 Bonds is exempt from personal income tax imposed by the United States Virgin Islands, or by any state, territory, or possession or by any political subdivision thereof or by the District of Columbia. In the opinion of Bond Counsel to the Authority, interest on the Revenue Bonds Series 2009A-2 Bonds (Senior Lien/Capital Projects/Federally Taxable) (the “Series 2009A-2 Bonds”) is included in gross income for Federal income tax purposes. (See “TAX MATTERS”, “FEDERALLY TAX EXEMPT BONDS” and “FEDERALLY TAXABLE BONDS.”)



**\$458,840,000**  
**VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY**  
**Revenue and Refunding Bonds**  
**(Virgin Islands Matching Fund Loan Notes)**



**\$86,350,000 Series 2009A-1 (Senior Lien/Capital Projects/Tax Exempt)**  
**\$8,650,000 Series 2009A-2 (Senior Lien/Capital Projects/Federally Taxable)**  
**\$266,330,000 Series 2009B (Senior Lien/Refunding)**  
**\$97,510,000 Series 2009C (Subordinate Lien/Refunding)**

DATED: Date of Delivery

DUE: October 1, as shown on inside cover page

The Virgin Islands Public Finance Authority Revenue and Refunding Bonds (Virgin Islands Matching Fund Loan Notes) Series 2009A-1 (Senior Lien/Capital Projects/Tax Exempt) (the “Series 2009A-1 Bonds”), the Series 2009A-2 (Senior Lien/Capital Projects/Federally Taxable) (the “Series 2009A-2 Bonds”) and together with the Series 2009A-1 Bonds, the “Series 2009A Bonds”), the Series 2009B (Senior Lien/Refunding) (the “Series 2009B Bonds”) and the Series 2009C (Subordinate Lien/Refunding) (the “Series 2009C Bonds”) and together with the Series 2009A Bonds and the Series 2009B Bonds, the “Series 2009 Bonds”) are issuable in minimum denominations of \$5,000 and integral multiples of \$5,000 in excess thereof and will be issued initially as a single registered bond for each maturity registered in the name of Cede & Co., the nominee of The Depository Trust Company (“DTC”), New York, New York. Beneficial ownership interests in the Series 2009 Bonds will be available for purchase in book-entry form only. Except in limited circumstances, purchasers of Series 2009 Bonds will not receive physical delivery of the Series 2009 Bonds, as further described herein. Principal of, Redemption Price of, if applicable, and interest payable on April 1 and October 1 of each year, commencing on April 1, 2010, on the Series 2009 Bonds, will be paid by the Paying Agent to DTC, who will remit payment to DTC Participants, with such payments to be subsequently disbursed to the beneficial owners of the Series 2009 Bonds, as further described herein. Certain Series 2009 Bonds shall be subject to redemption prior to maturity as described herein. (See “THE SERIES 2009 BONDS.”)

The Series 2009A Bonds are being issued by the Virgin Islands Public Finance Authority (the “Authority”) to (i) finance various capital projects in the Territory of the United States Virgin Islands (the “Territory” or “Virgin Islands”), as more particularly described herein, (ii) fund the Series 2009A Senior Lien Debt Service Reserve Subaccount and (iii) pay certain costs of issuing the Series 2009A Bonds. The Series 2009B Bonds are being issued by the Authority to (i) current refund in full the Revenue and Refunding Bonds Series 1998A (Senior Lien/Refunding) Bonds, (ii) together with other available monies, fund the Series 2009B Senior Lien Debt Service Reserve Subaccount and (iii) together with other available monies, pay certain costs of issuing the Series 2009B Bonds. The Series 2009C Bonds are being issued by the Authority to (i) current refund in full the Revenue and Refunding Bonds Series 1998E (Subordinate Lien/Capital Program) Bonds, (ii) fund the Series 2009C Subordinate Lien Debt Service Reserve Subaccount and (iii) pay certain costs of issuing the Series 2009C Bonds. (See “PLAN OF FINANCE – “Plan of Refunding.”) The Series 2009 Bonds will be issued under and secured by the Indenture of Trust, dated as of May 1, 1998 (as heretofore supplemented and amended, the “Original Indenture”), by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as successor trustee to United States Trust Company of New York, N.A. (the “Trustee”), and a Fourth Supplemental Indenture, dated as of October 1, 2009 (the “Fourth Supplemental Indenture”, and together with the Original Indenture, the “Indenture”). The Trustee will act as Registrar and Paying Agent for the Series 2009 Bonds. The Series 2009 Bonds will be secured by four special limited obligation loan notes (collectively, the “Series 2009 Loan Notes”) issued by the Government of the Virgin Islands (the “Government”) pursuant to a Loan Agreement, dated as of October 1, 2009, by and among the Authority, the Trustee and the Government (the “Series 2009 Loan Agreement”).

THE SERIES 2009 BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE AUTHORITY PAYABLE FROM AND SECURED BY A PLEDGE OF THE TRUST ESTATE WHICH INCLUDES CERTAIN FUNDS ESTABLISHED UNDER THE INDENTURE, INCLUDING THE PLEDGED REVENUE ACCOUNT AND THE RESPECTIVE SERIES 2009 DEBT SERVICE RESERVE SUBACCOUNTS. THE SERIES 2009 LOAN NOTES ARE SPECIAL LIMITED OBLIGATIONS OF THE GOVERNMENT AND ARE SOLELY SECURED BY A PLEDGE OF REVENUES RECEIVED BY THE GOVERNMENT FROM THE UNITED STATES DEPARTMENT OF THE TREASURY AS A TRANSFER OF FEDERAL EXCISE TAXES IMPOSED AND COLLECTED UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, IN ANY FISCAL YEAR, ON RUM PRODUCED IN THE UNITED STATES VIRGIN ISLANDS AND EXPORTED TO THE UNITED STATES WHICH IS SUBJECT TO A FEDERAL EXCISE TAX THAT QUALIFIES FOR TRANSFER TO THE GOVERNMENT (THE “MATCHING FUND REVENUES”). THE SERIES 2009A BONDS AND THE SERIES 2009B BONDS ARE BEING ISSUED ON A PARITY BASIS WITH THE PRIOR SENIOR LIEN BONDS AND ANY ADDITIONAL SENIOR LIEN BONDS (AS SUCH TERMS ARE DEFINED HEREIN) HEREAFTER ISSUED PURSUANT TO THE INDENTURE. UPON THE REFUNDING, THE SERIES 2009C BONDS WILL BE THE SOLE SERIES OF SUBORDINATE LIEN BONDS OUTSTANDING AND WILL BE ON A PARITY WITH ANY ADDITIONAL SUBORDINATE LIEN BONDS (AS SUCH TERM IS DEFINED HEREIN) HERINAFTER ISSUED PURSUANT TO THE INDENTURE. (SEE “MATCHING FUND REVENUES.”)

The Series 2009 Bonds shall under no circumstances constitute a general obligation of the Authority, the United States Virgin Islands or the United States of America, nor shall the Series 2009 Bonds be evidence of a debt of the United States of America or the United States Virgin Islands nor shall the United States of America or the United States Virgin Islands be liable thereon. The taxing power of the Government is not pledged for the Series 2009 Loan Notes or the Series 2009 Bonds. The Authority has no taxing power.

THE PURCHASE AND OWNERSHIP OF THE SERIES 2009 BONDS INVOLVES CERTAIN INVESTMENT RISKS. (SEE “BONDHOLDER RISKS.”) INFORMATION CONTAINED ON THIS COVER IS A SUMMARY ONLY. PROSPECTIVE PURCHASERS OF THE SERIES 2009 BONDS ARE ADVISED TO READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY.

The Series 2009 Bonds are offered subject to prior sale, when, as and if issued by the Authority and accepted by the Underwriters, subject to the approval of legality by Hawkins Delafield & Wood LLP, New York, New York, Bond Counsel to the Authority, and certain other conditions. Certain legal matters will be passed upon for the Authority by its counsel, Birch, deJongh & Hindels PLLC, St. Thomas, Virgin Islands, and for the Underwriters by their counsel, Duane Morris, LLP, New York, New York. It is expected that the Series 2009A Bonds will be available for delivery to DTC in New York, New York on or about October 8, 2009. It is expected that the Series 2009B Bonds and the Series 2009C Bonds will be available for delivery to DTC in New York, New York on or about October 28, 2009.

Citi

J.P. Morgan

Jefferies &amp; Company

Rice Financial Products Company

October 1, 2009

**\$458,840,000**

**VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY  
Revenue and Refunding Bonds  
(Virgin Islands Matching Fund Loan Notes)  
Maturities, Amounts, Interest Rates and Prices or Yields**

**\$86,350,000**

**Series 2009A-1 (Senior Lien/Capital Projects/Tax Exempt)**

**\$16,995,000 Serial Bonds**

<u>Maturity</u> <u>Date</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP</u> <sup>(1)</sup>
<u>October 1</u> 2010	\$1,460,000	3.000%	2.170%	927676NT9
2011	1,505,000	3.000	2.440	927676NU6
2012	1,550,000	3.000	2.780	927676NV4
2013	1,600,000	3.000	3.060	927676NW2
2014	1,650,000	3.300	3.370	927676NX0
2015	1,705,000	3.500	3.620	927676NY8
2016	1,770,000	3.750	3.850	927676NZ5
2017	1,840,000	4.000	4.070	927676PA8
2018	1,915,000	4.125	4.240	927676PB6
2019	2,000,000	4.300	4.370	927676PC4

\$5,970,000 4.50% Term Bonds Due October 1, 2024, priced to yield 4.570%, CUSIP<sup>(1)</sup> 927676PD2

\$5,555,000 5.00% Term Bonds Due October 1, 2024, priced to yield 4.570%†, CUSIP<sup>(1)</sup> 927676PE0

\$14,705,000 5.00% Term Bonds Due October 1, 2029, priced to yield 4.750%†, CUSIP<sup>(1)</sup> 927676PF7

\$43,125,000 5.00% Term Bonds Due October 1, 2039, priced to yield 5.000%, CUSIP<sup>(1)</sup> 927676PG5

† Priced to October 1, 2019, the first date on which the Series 2009A-1 Bonds are subject to optional redemption. (See "THE SERIES 2009 BONDS-Optional Redemption.")

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**\$8,650,000**

**Series 2009A-2 (Senior Lien/Capital Projects/Federally Taxable)**

<u>Maturity</u> <u>Date</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP</u> <sup>(1)</sup>
<u>October 1</u> 2010	\$2,000,000	3.000%	2.250%	927676QF6
2011	6,650,000	3.000	2.640	927676QG4

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<sup>(1)</sup> The CUSIP numbers on the Series 2009 Bonds are provided by Standard & Poor's CUSIP Service Bureau, a division of the McGraw-Hill Companies, Inc., and are set forth herein for convenience of reference only. The Authority assumes no responsibility for the accuracy of such numbers, nor is any representation made as to their correctness on the Series 2009 Bonds or as indicated above.

**\$266,330,000**

**Series 2009B (Senior Lien/Refunding)**

**\$171,410,000 Serial Bonds**

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>CUSIP<sup>(1)</sup></u>
<u>October 1</u>				
2010	\$3,500,000	5.000%	2.170%	927676PH3
2011	15,145,000	5.000	2.440	927676PJ9
2012	15,920,000	5.000	2.780	927676PK6
2013	16,740,000	5.000	3.060	927676PL4
2014	17,600,000	5.000	3.370	927676PM2
2015	18,505,000	5.000	3.620	927676PN0
2016	19,450,000	5.000	3.850	927676PP5
2017	20,450,000	5.000	4.070	927676PQ3
2018	21,500,000	5.000	4.240	927676PR1
2019	22,600,000	5.000	4.370	927676PS9

\$94,920,000 5.00% Term Bonds Due October 1, 2025, priced to yield 4.600%†, CUSIP<sup>(1)</sup> 927676PT7

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**\$97,510,000**

**Series 2009C (Subordinate Lien/Refunding)**

**\$70,980,000 Serial Bonds**

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>	<u>CUSIP<sup>(1)</sup></u>
<u>October 1</u>				
2010	\$1,500,000	5.000%	2.370%	927676PU4
2011	6,350,000	5.000	2.640	927676PV2
2012	6,675,000	5.000	2.980	927676PW0
2013	7,015,000	5.000	3.260	927676PX8
2014	7,210,000	5.000	3.570	927676PY6
2015	7,745,000	5.000	3.870	927676PZ3
2016	8,040,000	5.000	4.100	927676QA7
2017	8,440,000	5.000	4.320	927676QB5
2018	8,860,000	5.000	4.490	927676QC3
2019	9,145,000	5.000	4.620	927676QD1

\$26,530,000 5.00% Term Bonds Due October 1, 2022, priced to yield 4.670%†, CUSIP<sup>(1)</sup> 927676QE9

† Priced to October 1, 2019, the first date on which the Series 2009C Bonds are subject to optional redemption. (See “THE SERIES 2009 BONDS-Optional Redemption.”)

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\* <sup>(1)</sup> The CUSIP numbers on the Series 2009 Bonds are provided by Standard & Poor’s CUSIP Service Bureau, a division of the McGraw-Hill Companies, Inc., and are set forth herein for convenience of reference only. The Authority assumes no responsibility for the accuracy of such number, nor is any representation made as to their correctness on the Series 2009 Bonds or as indicated above.

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**VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY**

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Julito A. Francis, Director of Finance and Administration

**BOARD OF DIRECTORS\***

The Honorable John P. deJongh, Jr., Governor – Chairman  
Angel E. Dawson, Jr., Commissioner of Finance – Executive Director  
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Roy D. Jackson – St. Thomas/St. John Representative  
Pablo O’Neill – St. Croix Representative  
Keith C. O’Neale, Jr. – St. Croix Representative

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New York, New York

**FINANCIAL ADVISOR**

Fiscal Strategies Group  
Swarthmore, Pennsylvania

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\*Currently there is one vacancy on the Board.

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The information contained in this Official Statement has been obtained from the Authority, the Government, Cruzan VIRIL, Ltd. (formerly known as V.I. Rum Industries Limited or VIRIL) (“Cruzan”), Diageo USVI, Inc. (“Diageo USVI”), IHS Global Insight (USA), Inc. and other sources which are believed to be reliable, based primarily on a review of such information and discussions with the Government, the Authority, Cruzan, Diageo USVI and IHS Global Insight (USA), Inc. The Underwriters have provided the following sentence for inclusion in this Official Statement: The Underwriters have reviewed the information in this Official Statement in accordance with, and as a part of, their responsibility to investors under federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

THE SERIES 2009 BONDS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

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IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2009 BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITERS MAY OFFER AND SELL THE SERIES 2009 BONDS TO CERTAIN DEALERS AND DEALER BANKS AND OTHERS AT PRICES LOWER OR YIELDS HIGHER THAN THE PUBLIC OFFERING PRICES OR YIELDS STATED ON THE INSIDE COVER PAGE HEREOF AND SAID PUBLIC OFFERING PRICES OR YIELDS MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS.

## TABLE OF CONTENTS

<p>INTRODUCTION ..... 1</p> <p style="padding-left: 20px;">General..... 1</p> <p style="padding-left: 20px;">Use of Proceeds ..... 1</p> <p style="padding-left: 20px;">Security and Source of Payment ..... 2</p> <p style="padding-left: 20px;">Matching Fund Revenues ..... 2</p> <p style="padding-left: 20px;">Certain Bondholder Risks ..... 3</p> <p style="padding-left: 20px;">Miscellaneous ..... 3</p> <p>VIRGIN ISLANDS PUBLIC FINANCE</p> <p style="padding-left: 20px;">AUTHORITY ..... 3</p> <p style="padding-left: 40px;">Purposes and Powers ..... 3</p> <p style="padding-left: 40px;">Management..... 4</p> <p style="padding-left: 40px;">Outstanding Indebtedness of the Authority..... 4</p> <p>PLAN OF FINANCE..... 6</p> <p style="padding-left: 20px;">General..... 6</p> <p style="padding-left: 20px;">Capital Improvement Projects..... 6</p> <p style="padding-left: 20px;">Plan of Refunding ..... 7</p> <p>THE SERIES 2009 BONDS ..... 7</p> <p style="padding-left: 20px;">General..... 7</p> <p style="padding-left: 20px;">Authorization and Purpose..... 8</p> <p style="padding-left: 20px;">Senior/Subordinate Lien Structure..... 8</p> <p style="padding-left: 20px;">Book-Entry-Only System..... 8</p> <p style="padding-left: 20px;">Optional Redemption ..... 8</p> <p style="padding-left: 20px;">Mandatory Sinking Fund Installment Redemption .. 8</p> <p style="padding-left: 20px;">Purchase of the Series 2009 Bonds ..... 10</p> <p style="padding-left: 20px;">Selection; Notice of Redemption ..... 10</p> <p>SECURITY AND SOURCE OF PAYMENT FOR THE SERIES 2009 BONDS..... 10</p> <p style="padding-left: 20px;">General..... 10</p> <p style="padding-left: 20px;">Matching Fund Loan Notes ..... 11</p> <p style="padding-left: 20px;">Special Escrow Agreement ..... 11</p> <p style="padding-left: 20px;">Series 2009 Loan Agreement..... 12</p> <p style="padding-left: 20px;">Flow of Funds ..... 13</p> <p style="padding-left: 20px;">Debt Service Reserve Account ..... 16</p> <p style="padding-left: 20px;">Additional Bonds ..... 17</p> <p>DEBT SERVICE REQUIREMENTS ..... 18</p> <p>SOURCES AND USES OF FUNDS..... 19</p> <p>MATCHING FUND REVENUES ..... 20</p> <p style="padding-left: 20px;">General..... 20</p> <p style="padding-left: 20px;">Cover Over Rate ..... 21</p> <p style="padding-left: 20px;">Verification and Projection of Matching Fund Revenues ..... 22</p> <p>CRUZAN..... 26</p> <p style="padding-left: 20px;">General..... 26</p> <p style="padding-left: 20px;">The Cruzan Facility ..... 26</p> <p style="padding-left: 20px;">Description of the Cruzan Facilities..... 26</p> <p style="padding-left: 20px;">Management..... 26</p> <p style="padding-left: 20px;">Utilities, Services and Materials ..... 27</p> <p style="padding-left: 20px;">Permits ..... 27</p> <p style="padding-left: 20px;">The Rum Production Process ..... 27</p> <p style="padding-left: 20px;">Insurance Coverage During Operation..... 29</p> <p style="padding-left: 20px;">Ownership..... 29</p>	<p style="padding-left: 20px;">Current Subsidy and Support Payments..... 29</p> <p style="padding-left: 20px;">Proposed Cruzan Agreement ..... 30</p> <p style="padding-left: 20px;">Environmental..... 31</p> <p>DIAGEO..... 32</p> <p style="padding-left: 20px;">General..... 32</p> <p style="padding-left: 20px;">Diageo USVI..... 32</p> <p style="padding-left: 20px;">Diageo Holdings Netherlands B.V..... 32</p> <p style="padding-left: 20px;">Diageo plc..... 32</p> <p style="padding-left: 20px;">Diageo Holdings Comfort Letter ..... 33</p> <p>THE DIAGEO AGREEMENT ..... 34</p> <p style="padding-left: 20px;">Legislation ..... 35</p> <p>THE DIAGEO PROJECT ..... 36</p> <p style="padding-left: 20px;">General..... 36</p> <p style="padding-left: 20px;">Diageo Group’s Prior Experience in Developing and Operating Similar Facilities..... 36</p> <p style="padding-left: 20px;">Description of the Diageo Facilities..... 36</p> <p style="padding-left: 20px;">Construction Cost and Schedule ..... 39</p> <p style="padding-left: 20px;">Required Permits..... 39</p> <p style="padding-left: 20px;">Consulting/Engineering Contracts ..... 44</p> <p style="padding-left: 20px;">Construction Contracts..... 45</p> <p style="padding-left: 20px;">Facilities’ Managers..... 49</p> <p style="padding-left: 20px;">Utilities, Services and Materials ..... 49</p> <p style="padding-left: 20px;">The Rum Production Process..... 51</p> <p style="padding-left: 20px;">Diageo Service Agreement ..... 52</p> <p style="padding-left: 20px;">Insurance Coverage During Operation..... 53</p> <p>THE U.S. SPIRITS INDUSTRY ..... 54</p> <p>THE RUM INDUSTRY..... 54</p> <p style="padding-left: 20px;">Rum Production in the Virgin Islands..... 55</p> <p style="padding-left: 20px;">Molasses Subsidy Payments ..... 55</p> <p style="padding-left: 20px;">St. Croix Molasses Pier..... 56</p> <p>BONDHOLDER RISKS..... 58</p> <p style="padding-left: 20px;">Matching Fund Revenues Sole Security for Matching Fund Loan Notes..... 58</p> <p style="padding-left: 20px;">Limited Production Source ..... 58</p> <p style="padding-left: 20px;">Cruzan Agreement ..... 58</p> <p style="padding-left: 20px;">Diageo Project Risks..... 59</p> <p style="padding-left: 20px;"><i>Construction Risks</i> ..... 59</p> <p style="padding-left: 20px;"><i>Required Permits</i> ..... 59</p> <p style="padding-left: 20px;"><i>Leasing Risk</i>..... 59</p> <p style="padding-left: 20px;"><i>Historical and Archeological Resources</i> ..... 60</p> <p style="padding-left: 20px;">Outside Factors Could Affect Cruzan and the Diageo Project..... 60</p> <p style="padding-left: 20px;">Diageo Environmental Risks ..... 60</p> <p style="padding-left: 20px;">Cruzan Environmental Risks ..... 60</p> <p style="padding-left: 20px;">Diageo and Cruzan Operational Risks ..... 60</p> <p style="padding-left: 20px;">Competing Facility ..... 61</p> <p style="padding-left: 20px;">Seismic Risks and Other Natural Disasters..... 61</p> <p style="padding-left: 20px;">Government’s Obligation to Make Payments ..... 61</p> <p style="padding-left: 20px;">Proposed Legislation..... 61</p> <p style="padding-left: 20px;">Insurance Coverage..... 62</p> <p style="padding-left: 20px;">Demand for Rum ..... 62</p>
--	---

Fluctuating Price, Availability and Subsidy on Molasses.....	62	Original Issue Premium .....	68
Federal Bankruptcy Code Presently Inapplicable ....	63	Disposition and Defeasance .....	68
Change in Law .....	63	Backup Withholding and Information Reporting.....	68
Matching Fund Revenues Payment Procedures.....	63	U.S. Holders.....	69
LITIGATION .....	63	IRS Circular 230 Disclosure .....	69
TAX MATTERS .....	64	Miscellaneous .....	69
General.....	64	FINANCIAL STATEMENTS .....	69
FEDERALLY TAX EXEMPT BONDS.....	64	VERIFICATION .....	70
Certain Ongoing Federal Tax Requirements and Covenants.....	64	LEGAL OPINIONS.....	70
Certain Collateral Federal Tax Consequences .....	65	FINANCIAL ADVISOR .....	70
Original Issue Discount.....	65	CONTINUING DISCLOSURE; DISCLOSURE DISSEMINATION .....	70
Bond Premium .....	66	Continuing Disclosure .....	70
Information Reporting and Backup Withholding.....	66	Disclosure Dissemination Agent.....	71
Miscellaneous .....	66	RATINGS.....	72
FEDERALLY TAXABLE BONDS .....	67	UNDERWRITING .....	72
Certain Federal Tax Consequences.....	67	MISCELLANEOUS.....	73
Original Issue Discount.....	67		
Appendix A: GLOSSARY OF CERTAIN DEFINED TERMS.....	A-1		
Appendix B: SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE, THE FOURTH SUPPLEMENTAL INDENTURE AND THE SPECIAL ESCROW AGREEMENT ..	B-1		
Appendix C: SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2009 LOAN AGREEMENT .....	C-1		
Appendix D: VERIFICATION AND PROJECTION OF VIRGIN ISLANDS MATCHING FUND REVENUES FROM RUM SHIPMENTS TO THE US.....	D-1		
Appendix E: UNITED STATES VIRGIN ISLANDS .....	E-1		
Appendix F: FORM OF CONTINUING DISCLOSURE CERTIFICATE OF THE AUTHORITY...F-1	F-1		
Appendix G: FORM OF PROPOSED OPINION OF BOND COUNSEL .....	G-1		
Appendix H: DTC BOOK ENTRY ONLY SYSTEM .....	H-1		



# OFFICIAL STATEMENT

**\$458,840,000**

**VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY**

**Revenue and Refunding Bonds**

**(Virgin Islands Matching Fund Loan Notes)**

**\$86,350,000 Series 2009A-1 (Senior Lien/Capital Projects/Tax Exempt)**

**\$8,650,000 Series 2009A-2 (Senior Lien/Capital Projects/Federally Taxable)**

**\$266,330,000 Series 2009B (Senior Lien/Refunding)**

**\$97,510,000 Series 2009C (Subordinate Lien/Refunding)**

## INTRODUCTION

### General

The purpose of this Official Statement, which includes the cover page and the appendices, is to furnish certain information concerning the Virgin Islands Public Finance Authority (the "Authority") and the sale and delivery of its Revenue and Refunding Bonds (Virgin Islands Matching Fund Loan Notes), Series 2009A-1 (Senior Lien/Capital Projects/Tax Exempt) (the "Series 2009A-1 Bonds"), Series 2009A-2 (Senior Lien/Capital Projects/Federally Taxable) (the "Series 2009A-2 Bonds", and together with the Series 2009A-1 Bonds, the "Series 2009A Bonds"), Series 2009B (Senior Lien/Refunding) (the "Series 2009B Bonds") and Series 2009C (Subordinate Lien/Refunding) (the "Series 2009C Bonds" together with the Series 2009A Bonds and the Series 2009B Bonds, the "Series 2009 Bonds"), in the aggregate principal amount of \$458,840,000. The Series 2009 Bonds are being issued pursuant to an Indenture of Trust, dated as of May 1, 1998 (as heretofore supplemented and amended, the "Original Indenture"), by and between the Authority and The Bank of New York Mellon Trust Company, N.A., Jacksonville, Florida, as successor trustee (the "Trustee"), a Fourth Supplemental Indenture, dated as of October 1, 2009 (the "Fourth Supplemental Indenture", together with the Original Indenture, the "Indenture"), by and between the Authority and the Trustee, and the Loan Agreement, dated as of October 1, 2009 (the "Series 2009 Loan Agreement"), by and among the Government of the United States Virgin Islands (referred to herein as the "Government"), the Trustee and the Authority.

The Series 2009 Bonds are being issued pursuant to the Virgin Islands Revised Organic Act of 1954, as amended (48 U.S.C. Section 1574 et seq.) (West 1987) (the "Revised Organic Act"), the laws of the Virgin Islands, including Title 29, Chapter 15, of the Virgin Islands Code, 1998 V.I. Act 6227 and 2009 V.I. Act 7081, as amended by 2009 V.I. Act 7095 (together with the Revised Organic Act, the "Act"), and other applicable law. All capitalized terms not defined in this Official Statement have meanings as defined in Appendix A entitled "GLOSSARY OF TERMS".

### Use of Proceeds

Proceeds from the Series 2009 Bonds, together with other available monies, will be used to: (i) current refund the Authority's Revenue and Refunding Bonds, Series 1998A (Senior Lien/Refunding) (the "Series 1998A Bonds") and its Revenue and Refunding Bonds, Series 1998E (Subordinate Lien/Refunding) (the "Series 1998E Bonds"), (ii) fund various capital projects in the Territory of the United States Virgin Islands (the "Virgin Islands"), (iii) fund the reserve subaccounts for each Series of the Series 2009 Bonds, and (iv) pay certain costs of issuing the Series 2009 Bonds. (See "PLAN OF FINANCE" and "SOURCES AND USES OF FUNDS.")

## **Security and Source of Payment**

The Series 2009 Bonds, together with certain Prior Bonds (defined below) and any Additional Bonds hereafter issued under the Indenture (as such terms are hereinafter defined), are payable and secured by a pledge of the Trust Estate as further described and as defined herein. (See “SECURITY AND SOURCE OF PAYMENT FOR THE SERIES 2009 BONDS.”)

Each of the Series 2009 Bonds is payable from and secured by the Trust Estate, including, without limitation, the Series 2009A-1 Matching Fund Loan Note (the “Series 2009A-1 Loan Note”), the Series 2009A-2 Matching Fund Loan Note (the “Series 2009A-2 Loan Note”), the Series 2009B Matching Fund Loan Note (the “Series 2009B Loan Note”) and the Series 2009C Matching Fund Loan Note (the “Series 2009C Loan Note”, together with the Series 2009A-1 Loan Note, the Series 2009A-2 Loan Note and the Series 2009B Loan Note, the “Series 2009 Loan Notes”) issued by the Government pursuant to the Series 2009 Loan Agreement. The Government will be obligated under each Series 2009 Matching Fund Loan Note to make payments solely from the Matching Fund Revenues (hereinafter defined) to the Authority in amounts sufficient to pay all principal, premium, if any, and interest on the respective Series of the Series 2009 Bonds when due and to make the amount on deposit in the respective Debt Service Reserve Subaccounts equal to the respective Debt Service Reserve Requirements pursuant to the terms of the Indenture. The Series 2009 Loan Notes will be notes issued in anticipation of the receipt of the Matching Fund Revenues over the full term of the Series 2009 Loan Notes, which Matching Fund Revenues are projected to be in excess of the amount necessary to pay all the principal of, premium, if any, and interest on (i) the Series 2009 Loan Notes, and (ii) the matching fund loan notes previously issued in connection with and which secure the Prior Bonds (hereinafter defined) (the “Prior Matching Fund Loan Notes”). However, no assurances can be given as to the sufficiency of Matching Fund Revenues for such purpose. (See “SECURITY AND SOURCE OF PAYMENT FOR THE SERIES 2009 BONDS” and “MATCHING FUND REVENUES.”)

The Series 2009 Loan Notes are special limited obligations of the Government and are secured solely by a pledge and assignment of the Matching Fund Revenues on a parity basis with the Prior Matching Fund Loan Notes. Payment of debt service on the Series 2009C Bonds from the Trust Estate is subordinate to the payment of debt service on Series 2009A Bonds, the Series 2009B Bonds and the Prior Senior Lien Bonds. Payment of debt service on the Subordinated Diageo Matching Fund Bonds (as hereinafter defined) from Matching Fund Revenues is subordinate to the payment of the Series 2009 Bonds, the Prior Senior Lien Bonds, the Prior Subordinate Lien Bonds, any additional Senior Lien Bonds and any additional Subordinate Lien Bonds.

On July 9, 2009, the Authority’s \$250,000,000 Virgin Island Public Finance Authority Subordinated Revenue Bonds, Diageo Matching Fund Loan Notes (the “Subordinated Diageo Matching Fund Bonds”) were issued on a subordinated basis to the Prior Senior Lien Bonds, Prior Subordinate Lien Bonds and any additional Senior Lien Bonds and Subordinate Lien Bonds (as such terms are hereinafter defined) (including the Series 2009 Bonds) issued pursuant to the Indenture. The Subordinated Diageo Matching Fund Bonds are secured by a pledge of the Diageo Trust Estate which is primarily comprised of the portion of surplus Matching Fund Revenues generated from the production of bulk rum at the Diageo facility available after satisfying all obligations under the Indenture with respect to the Senior Lien Bonds and the Subordinate Lien Bonds (the “Diageo Matching Fund Revenues”).

## **Matching Fund Revenues**

Matching Fund Revenues are those revenues received by the Government from the United States Department of the Treasury (the “Treasury”), through the Secretary of the Interior, as a transfer of federal excise taxes imposed and collected under the Internal Revenue Code of 1986, as amended (the “Code”) in any Fiscal Year, which commences on October 1 of each year (the “Fiscal Year), on any product produced in the Virgin Islands and exported to the United States and that is subject to federal excise tax

that qualifies for transfer to the Government (the “Matching Fund Revenues”). Rum is the principal article presently produced in the Virgin Islands and exported to the United States that is subject to federal excise tax that qualifies for transfer to the Government under the applicable provisions of the Revised Organic Act and the Code. In accordance with federal law, Matching Fund Revenues have been transferred to the Government every year since 1954. (See “MATCHING FUND REVENUES” and “THE RUM INDUSTRY.”)

### **Certain Bondholder Risks**

**THE PURCHASE AND OWNERSHIP OF THE SERIES 2009 BONDS INVOLVE INVESTMENT RISKS. PROSPECTIVE PURCHASERS OF THE SERIES 2009 BONDS ARE ADVISED TO READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY. FOR A DISCUSSION OF CERTAIN RISKS RELATING TO THE SERIES 2009 BONDS, SEE “BONDHOLDER RISKS” HEREIN.**

### **Miscellaneous**

This Official Statement describes, among other items, the Series 2009 Bonds, the Series 2009 Loan Agreement, the Series 2009 Loan Notes, Matching Fund Revenues, the Special Escrow Agreement (as hereafter defined), the Indenture, the Authority and the Virgin Islands. The descriptions do not purport to be comprehensive or definitive and reference is made to the Series 2009 Loan Agreement, the Special Escrow Agreement and the Indenture for full and complete statements of the provisions thereof. Copies of the Indenture, the Series 2009 Loan Agreement, and the Special Escrow Agreement, including the form of the Series 2009 Bonds and the Series 2009 Loan Notes, are available at the office of the Trustee, 10161 Centurion Parkway, Jacksonville, Florida 32256 (904-645-1912), and at the offices of the Authority, 32-33 Kongens Gade, Charlotte Amalie, St. Thomas, United States Virgin Islands 00802 (340-714-1635); Attention: Director of Finance and Administration. [www.usvipfa.com](http://www.usvipfa.com)

## **VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY**

### **Purposes and Powers**

The Authority was created in 1988 by United States Virgin Islands Act 5365 of the Legislature of the Virgin Islands (the “Legislature”) as a public corporation and autonomous governmental instrumentality for the purposes of aiding the Government in the performance of its fiscal duties and in effectively carrying out its governmental responsibility of raising capital for essential public projects. Under its enabling legislation, the Authority is vested with, but not limited to, the following powers: (i) to have perpetual existence as a corporation, (ii) to borrow money and issue bonds, (iii) to lend the proceeds of its bonds or other money to the Government or any agency, authority or instrumentality thereof or private enterprise in the Virgin Islands subject to the approval of the Legislature of the Virgin Islands, (iv) to establish one or more revolving loan funds with the proceeds of bonds issued by the Authority or issued by the Government or any agency, authority or instrumentality thereof, (v) to encourage economic development through the issuance of special obligations issued to finance a project for the benefit of private parties which special obligations are payable out of revenue generated by the involved project and are payable to the Authority by said private party, (vi) to invest its funds and to arrange for the investment of the funds of the Government or any agency, authority or instrumentality thereof, (vii) to enter into contracts and agreements with the government of the United States, the Government and any agency, authority or political subdivision thereof, (viii) to make, modify and repeal by-laws, rules and regulations, (ix) to acquire, sell, lease, mortgage, pledge, dispose of or encumber property or interests therein, and (x) to sue and be sued.

## Management

The powers of the Authority are exercised by a board of directors (the “Board of Directors”) consisting of seven members. The Governor of the Virgin Islands, the Commissioner of Finance and the Director of the Office of Management and Budget of the Virgin Islands, are members and serve ex-officio. The remaining members are appointed by the Governor of the Virgin Islands with the advice and consent of the Legislature and represent the private sector. Of these remaining members, two must be residents of the District of St. Thomas/St. John and two must be residents of the District of St. Croix. These individuals must be experienced in the area of municipal finance. The Governor serves as Chairman of the Board of Directors, the Commissioner of Finance serves as the Authority’s Executive Director and the Director of the Office of Management and Budget serves as Secretary to the Authority.

The following is a list of the current Board of Directors with their official posts or, for private sector representatives, their island of residency, and date of expiration of their current terms on the Board of Directors. The Governor of the Virgin Islands, the Commissioner of Finance and the Director of the Office of Management and Budget serve terms which are coincident with their terms in such offices. The Directors who represent the private sector serve 4-year terms. Currently, there is one vacancy on the Board of Directors.

<u>Name</u>	<u>Government Post or Profession/Residency</u>	<u>Term Expiration</u>
The Honorable John P. deJongh, Jr., Chairman	Governor of the Virgin Islands .....	Ex Officio
Angel E. Dawson, Jr.	Commissioner of Finance .....	Ex-Officio
Debra E. Gottlieb	Director of the Office of Management and Budget.....	Ex Officio
Roy D. Jackson	Certified Public Accountant, St. Thomas	2001*
Pablo O’Neil	Certified Public Accountant, St. Croix	2013
Keith C. O’Neale, Jr.	Business Owner, St. Croix	2013

\* Members serve until the appointment and confirmation of a successor.

Julito A. Francis serves as the Director of Finance and Administration of the Authority, the senior management position, and is responsible for the administration and operation of the Authority. The Director of Finance and Administration is appointed by, and serves at the pleasure of, the Board of Directors.

## Outstanding Indebtedness of the Authority

### *Parity Bonds/Subordinate Bonds*

The Authority previously has issued certain revenue and refunding bonds that are secured by and payable from Matching Fund Revenues, including the Revenue and Refunding Bonds (Virgin Islands Matching Fund Loan Note), Series 1998A (Prior Senior Lien/Refunding) in the principal amount of \$289,075,000 (the “Series 1998A Bonds”), the Series 1998B Bonds (Prior Senior Lien/Refunding/Taxable) in the principal amount of \$26,015,000, the Series 1998C Bonds (Prior Senior Lien/Working Capital) in the principal amount of \$81,170,000, and the Series 2004A Revenue Bonds (Virgin Islands Matching Fund Loan Note) in the principal amount of \$94,000,000 (together, the “Prior Senior Lien Bonds”), the Series 1998D Bonds (Prior Subordinate Lien/Working Capital) (the “Series 1998D Bonds”) in the principal amount of \$39,130,000 and the Series 1998E Bonds (Prior Subordinate Lien/Capital Program) (the “Series 1998E Bonds”) in the principal amount of \$106,430,000 (together, the “Prior Subordinate Lien Bonds”, collectively, the “Prior Bonds”). As of September 30, 2009, \$477,815,000 principal amount of Prior Bonds are outstanding, of which \$371,385,000 principal amount are Senior Lien Bonds and \$106,430,000 principal amount are Subordinate Lien Bonds. Upon the

issuance of the Series 2009B Bonds, the Series 1998A Bonds in the principal amount of \$289,075,000 will no longer be outstanding. Upon the issuance of the Series 2009C Bonds the Series 1998E Bonds in the principal amount of \$106,430,000 will no longer be outstanding. The Prior Senior Lien Bonds are equally secured and on a parity with, and entitled to the same benefits as, the Series 2009A Bonds and Series 2009B Bonds. Payment from the Trust Estate of the Prior Subordinate Lien Bonds is subordinate to payment from the Trust Estate of the Prior Senior Lien Bonds. Upon the refunding of the Series 1998E Bonds, the only Subordinate Lien Bonds outstanding will be the Series 2009C Bonds. (See “PLAN OF FINANCE – Plan of Refunding.”)

Subordinated Diageo Matching Fund Bonds. In July 2009, the Authority issued its Subordinated Diageo Matching Fund Bonds, in the principal amount of \$250,000,000. The Subordinated Diageo Matching Fund Bonds are special limited obligations of the Authority payable from and secured by a pledge of the Diageo Trust Estate which is primarily comprised of the Diageo Matching Fund Revenues. The Subordinated Diageo Matching Fund Bonds were issued on a subordinated basis to the Prior Senior Lien Bonds, Prior Subordinate Lien Bonds, and any additional Senior Lien Bonds and additional Subordinate Lien Bonds (including the Series 2009 Bonds) issued pursuant to the Indenture. (See “INTRODUCTION – Security and Source of Payment.”)

#### *Separately Secured Bonds and Obligations*

Gross Receipts Taxes Bonds and Notes. The Authority also has issued revenue bonds secured by and payable from Gross Receipts Taxes, including \$299,880,000 principal amount of Revenue Bonds (Virgin Islands Gross Receipts Taxes Loan Note), Series 1999A, \$268,020,000 principal amount of Revenue Bonds (Virgin Islands Gross Receipts Taxes Loan Note), Series 2003A, and \$219,490,000 principal amount of Revenue Bonds (Virgin Islands Gross Receipts Taxes Loan Note), Series 2006 (collectively, the “Gross Receipts Taxes Bonds”). In addition, the Authority has issued \$6,350,000 principal amount of Subordinate Lien Revenue Notes (Virgin Islands Gross Receipts Taxes Loan Note), Series 2005, \$4,000,000 principal amount of Subordinated Lien Revenue Notes (Virgin Islands Gross Receipts Taxes Loan Note), Series 2006, \$7,650,000 principal amount of Subordinated Lien Revenue Notes (Virgin Island Gross Receipts Taxes Loan Note), Series 2008A and \$8,000,000 principal amount of Subordinate Lien Revenue Bond Anticipation Notes (Virgin Islands Gross Receipts Taxes Loan Note), Series 2009A. The Authority has authorized the issuance of up to \$250,000,000 Subordinate Lien Revenue Bond Anticipation Notes (Virgin Island Gross Receipts Taxes Loan Notes), Series 2009B, dated as of September 2, 2009 and effective as of September 18, 2009 (the “Series 2009B Notes”) (collectively, the “Gross Receipts Taxes Notes”), pursuant to the terms of a syndicated non-revolving credit facility, of which FirstBank Puerto Rico agreed to loan up to \$150,000,000 and Banco Popular de Puerto Rico agreed to loan up to \$100,000,000 (collectively, the “Credit Facility”). The Credit Facility is to be used for working capital needs and other governmental obligations including payroll, vendors and short term obligations of the Government. The payment of the principal due on the Series 2009B Notes is expected to be paid from proceeds of Gross Receipts Taxes Bonds, when and if issued, or from surplus Matching Fund Revenues available to the Government. The Gross Receipts Taxes Bonds and the Gross Receipts Taxes Notes were issued pursuant to and secured under an Indenture of Trust dated as of November 1, 1999, by and between the Authority and The Bank of New York Mellon Trust Company, N.A, as successor trustee, as previously supplemented and amended (the “Gross Receipts Taxes Indenture”). On September 22, 2009, the Authority made its first draw of \$100,000,000 under the Credit Facility.

Each Series of the Gross Receipts Taxes Bonds and the Gross Receipts Taxes Notes is secured, on a parity basis, by the Gross Receipts Taxes Loan Notes issued by the Government, which are payable primarily from Gross Receipts Taxes imposed and collected by the Government from individuals and entities doing business in the Virgin Islands. The Gross Receipts Taxes Loan Notes constitute general obligations of the Government secured by the full faith and taxing power of the Government. The Gross Receipts Taxes Notes and the security pledged therefor are subject and subordinate to the prior payment of the Gross Receipts Taxes Bonds. The Authority plans to issue additional bonds under the Gross

Receipts Taxes Indenture to provide funds to pay the cost of certain capital projects and/or working capital expenditures of the Government. As of September 30, 2009, \$567,235,000 principal amount of the Gross Receipts Taxes Bonds and \$113,005,655 principal amount of the Gross Receipts Taxes Notes were outstanding.

*HOVENSA Bonds.* The Authority has issued multiple series of 30-year private activity bonds in the aggregate principal amount of \$355,683,000 on behalf of HOVENSA, SA (“HOVENSA”), an oil refinery located on the island of St. Croix (the “HOVENSA Bonds”). HOVENSA, SA is solely responsible for the payment of debt service on the HOVENSA Bonds. As of June 1, 2009, \$355,683,000 of the HOVENSA Bonds were outstanding. The HOVENSA Bonds are not payable from or secured by the Matching Fund Revenues.

*WICO Guaranty.* On November 20, 2002, the Authority executed an Unlimited Continuing Guaranty in favor of Banco Popular de Puerto Rico (“Banco Popular”), pursuant to which the Authority agreed to unconditionally guarantee any and all indebtedness of The West Indian Company Limited (“WICO”), a wholly owned subsidiary of the Authority, to Banco Popular. As used in the Unlimited Continuing Guaranty, the term indebtedness includes, but is not limited to, the \$23,600,000 loan from Banco Popular to WICO, which loan represents a consolidation of prior indebtedness of both the Authority and WICO to Banco Popular and any modifications, amendments or refinancings thereof. The WICO Guaranty constitutes a direct and general obligation of the Authority. As of October 1, 2009, outstanding principal and interest on the underlying indebtedness guaranteed by the Authority pursuant to the Unlimited Continuing Guaranty aggregated \$23,262,016.

For a listing of the Authority’s bonds and similar obligations outstanding as of September 30, 2009, see APPENDIX E — “UNITED STATES VIRGIN ISLANDS—Outstanding Indebtedness of the Government.”

## **PLAN OF FINANCE**

### **General**

The Series 2009A Bonds are being issued to finance certain capital projects. The 2009B Bonds are being issued to refund the Authority’s outstanding Series 1998A Bonds. The Series 2009C Bonds are being issued to refund the outstanding Series 1998E Bonds. A portion of the proceeds of the Series 2009 Bonds will be used to fund, together with other available monies, the respective Debt Service Reserve Subaccounts and pay certain costs of issuing the Series 2009 Bonds.

### **Capital Improvement Projects**

The Government intends to use a portion of the proceeds of the Series 2009A-1 Bonds to finance certain capital projects of the Government, which proceeds will be provided to the appropriate Government agencies, as follows: (i) to the Virgin Islands Police Department for improvements to emergency management services, including the Government’s 911 communications system; (ii) to the Virgin Islands Department of Education for the equipping and construction of improvements to schools; (iii) to the Department of Public Works for the construction, paving, drainage improvement and maintenance of roads, sidewalks and cemeteries; (iv) to the Department of Housing Parks and Recreation for the construction, renovation and enhancement of playgrounds and parks; (v) to the Virgin Islands Water and Power Authority (“WAPA”) for the construction of potable water lines; (vi) to the Department of Justice for upgrades to libraries and classroom at correctional facilities; (vii) to the Virgin Islands Police Department for the construction of police sub-stations; (viii) to the Virgin Islands Housing Authority for the purchase of land for affordable housing; (ix) to the Virgin Islands Board of Education for renovation of offices; (x) to the Virgin Islands Waste Management Authority (“VIWMA”) for improvements to and reconstruction of monitoring systems at the Anguilla Landfill and the Bovoni

Landfill and the acquisition, construction and equipping of a transfer station on the island of St. Croix, and (xi) to the Virgin Islands Economic Development Authority for the funding of an economic development fund.

The Government intends to use a portion of the proceeds of the Series 2009A-2 Bonds to finance certain capital projects of the Government that are not qualified to be financed with federally tax-exempt bonds.

### **Plan of Refunding**

The Series 2009B Bonds and the Series 2009C Bonds (collectively, the “Refunding Bonds”) are being issued to current refund in full on or about October 28, 2009 the Authority’s Series 1998A Bonds and Series 1998E Bonds, respectively. The Refunding Bonds are being issued to refund the Series 1998A Bonds and the Series 1998E Bonds on or about October 28, 2009, in accordance with the terms of the Indenture. A conditional notice of redemption was mailed to holders of the Series 1998A Bonds and Series 1998E Bonds. All of the proceeds received by the Authority from the sale of the Series 2009B Bonds and the Series 2009C Bonds, other than amounts required to pay certain costs of issuance and amounts required to fund, together with other available monies, the respective Debt Service Reserve Subaccounts, will be deposited into the respective Escrow Subaccounts pursuant to the Fourth Supplemental Indenture. (See “SOURCES AND USES OF FUNDS.”)

Funds necessary to refund the Series 1998A Bonds and the Series 1998E Bonds will be held in the Escrow Subaccounts as cash. The amounts in the Escrow Subaccounts shall be applied on October 28, 2009 to redeem all of the Series 1998A Bonds and the Series 1998E Bonds.

Simultaneously with the transfer of the proceeds of each of the Series 2009B Bonds and the Series 2009C Bonds to their respective Escrow Subaccounts, the pledge of any revenues and other moneys, securities, funds and property pledged under the Original Indenture and all other rights granted thereby pertaining to such Series 1998A Bonds and Series 1998E Bonds, including Matching Fund Loan Notes delivered as security for the Series 1998A Bonds and the Series 1998E Bonds, shall be released, discharged and satisfied. In accordance with the terms of the Indenture, the deposit of such moneys in the respective Escrow Subaccounts and the investment thereof in Escrow Obligations, will serve to fully discharge and defease the liens of the Original Indenture relative to the Series 1998A Bonds and the Series 1998E Bonds and, thereupon, there shall be paid over to the Trustee certain amounts held under the Original Indenture to be used to fund, together with proceeds of the Series 2009B Bonds and the Series 2009C Bonds, the respective Debt Service Reserve Subaccounts for the Series 2009B Bonds and the Series 2009C Bonds. (See “SECURITY AND SOURCE OF PAYMENT FOR THE SERIES 2009 BONDS.”) Upon such defeasance of the Series 1998A Bonds and the Series 1998E Bonds, the holders of the Series 1998A Bonds and the Series 1998E Bonds shall have no legal right to the Matching Fund Loan Notes, the Matching Fund Revenues or any security pledged to secure such Bonds. (See “SECURITY AND SOURCE OF PAYMENT FOR THE SERIES 2009 BONDS - Matching Fund Loan Notes.”)

## **THE SERIES 2009 BONDS**

### **General**

The Series 2009 Bonds will be dated the date of delivery and bear interest at the rates and will mature on the dates set forth on the inside cover of this Official Statement. Interest on the Series 2009 Bonds will be payable on April 1 and October 1, commencing on April 1, 2010. The Series 2009 Bonds are subject to redemption at the times and in the manner set forth below in “THE SERIES 2009 BONDS” – “Optional Redemption” – “Mandatory Sinking Fund Installment Redemption”. Pursuant to the

Indenture, the Authority has appointed the Trustee as the Paying Agent and Registrar. Interest on the Series 2009 Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months and will be payable to Cede & Co., or such other owner of record as shown in the registration books of the Authority maintained by the Paying Agent as Registrar. The Series 2009 Bonds will be available initially in minimum denominations of \$5,000 and integral multiples of \$5,000 in excess thereof, in book-entry only form as described below.

### **Authorization and Purpose**

The Series 2009 Bonds will be issued pursuant to, and secured by, the Indenture and pursuant to Virgin Islands law. Proceeds of the Series 2009 Bonds will be used to (i) finance various capital projects in the Virgin Islands, pay costs of issuing the Series 2009 Bonds, (ii) current refund in full the Series 1998A (Senior Lien/Refunding) Bonds and the Series 1998E (Subordinate Lien/Capital Program) Bonds (See “PLAN OF FINANCE – Plan of Refunding”), (iii) fund, together with other available monies, the debt service reserve subaccounts for each Series of the Series 2009 Bonds in an amount equal to the respective Debt Service Reserve Requirements and (iv) pay costs of issuing the Series 2009 Bonds.

### **Senior/Subordinate Lien Structure**

**The Series 2009A Bonds and the Series 2009B Bonds each constitute a Series of Senior Lien Bonds under the Indenture. The Series 2009C Bonds constitute a series of Subordinate Lien Bonds under the Indenture. Payment from the Trust Estate of the Subordinate Lien Bonds is subordinate to the payment from the Trust Estate of the Senior Lien Bonds. The failure to pay interest, principal or the Redemption Price on the Senior Lien Bonds shall constitute a cross default on the Subordinate Lien Bonds. The failure to pay interest, principal or the Redemption Price on the Subordinate Lien Bonds, however, shall not constitute an Event of Default on the Senior Lien Bonds.**

### **Book-Entry-Only System**

The Depository Trust Company (“DTC”) will act as securities depository for the Series 2009 Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity of the Series 2009 Bonds, and will be deposited with DTC. For more information regarding the book-entry only system see APPENDIX H – “DTC BOOK-ENTRY ONLY SYSTEM.”

### **Optional Redemption**

Each Series of the Series 2009 Bonds shall be subject to redemption at the option of the Authority prior to their stated maturities, on or after October 1, 2019, in whole or in part, at any time in such order of maturity within each Series as the Authority shall determine, and otherwise by lot within a maturity, from any funds available therefor, at a redemption price equal to 100% of the principal amount thereof, together with the interest accrued on the principal amount redeemed to the date fixed for redemption.

### **Mandatory Sinking Fund Installment Redemption**

The Series 2009A Term Bonds, the Series 2009B Term Bonds and the Series 2009C Term Bonds are subject to redemption in part on each October 1, by operation of mandatory Sinking Fund Installment requirements, required by the Indenture to be on deposit on October 1 in the years and the amounts set forth in the following table, at a redemption price equal to the principal amount thereof, together with the interest accrued thereon to the date fixed for redemption.



**Sinking Fund Installments**

Year	Series 2009A-1 Bonds Maturing October 1, 2024 <sup>1</sup>	Series 2009A-1 Bonds Maturing October 1, 2024 <sup>2</sup>	Series 2009A-1 Bonds Maturing October 1, 2029	Series 2009A-1 Bonds Maturing October 1, 2039	Series 2009B Bonds Maturing October 1, 2025	Series 2009C Bonds Maturing October 1, 2022
2010						
2011						
2012						
2013						
2014						
2015						
2016						
2017						
2018						
2019						
2020	\$950,000	\$1,140,000			\$23,760,000	\$8,415,000
2021	1,050,000	1,145,000			24,975,000	10,345,000
2022	1,200,000	1,100,000			9,650,000	7,770,000†
2023	1,350,000	1,060,000			1,275,000	
2024	1,420,000†	1,110,000†			26,750,000	
2025			\$2,655,000		8,510,000†	
2026			2,790,000			
2027			2,935,000			
2028			3,085,000			
2029			3,240,000†			
2030				\$3,410,000		
2031				3,585,000		
2032				3,765,000		
2033				3,960,000		
2034				4,165,000		
2035				4,375,000		
2036				4,600,000		
2037				4,835,000		
2038				5,085,000		
2039				5,345,000†		

† Final Maturity

<sup>1</sup> 4.5% Coupon

<sup>2</sup> 5% Coupon

## **Purchase of the Series 2009 Bonds**

Pursuant to the Indenture, the Trustee may purchase the Series 2009 Bonds on the open market whenever a redemption would otherwise occur, at the direction of the Authority, at such price not to exceed the principal of, and redemption premium, if any, on the Series 2009 Bonds which would be payable on the next redemption date.

## **Selection; Notice of Redemption**

In the event of any redemption of less than all of any of a Series of Series 2009 Bonds, portions of a maturity of such series to be redeemed will be selected at random by the Trustee in such manner as the Trustee in its discretion may deem fair and appropriate; provided, however, that the portion of any of the Series 2009 Bonds of a denomination greater than \$5,000 to be redeemed shall be in the principal amount of \$5,000, or an integral multiple of \$5,000 in excess thereof. In selecting portions of such Bonds for redemption, the Trustee shall treat each such Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond to be redeemed in part by \$5,000; provided, however, notwithstanding the foregoing, the Trustee shall revise the Bonds or portions thereof to be redeemed as determined by the foregoing, in any manner deemed by the Trustee in its sole judgment to be fair and reasonable, so that no Bond Outstanding following any redemption shall be in a principal amount less than an authorized denomination therefor. Notice of any such redemption will be mailed by the Trustee not more than 60 nor less than 30 days prior to the date fixed for the redemption thereof, to each registered holder of the Series 2009 Bonds selected for redemption. The Authority, so long as a book-entry method is used for the Series 2009 Bonds, will send any such notice of redemption only to DTC.

## **SECURITY AND SOURCE OF PAYMENT FOR THE SERIES 2009 BONDS**

### **General**

The Series 2009 Bonds are payable from, and secured by, a pledge of the Trust Estate which includes certain funds established under the Indenture and the Series 2009 Loan Notes. The Series 2009 Loan Notes are special limited obligations of the Government and are secured solely by a pledge and assignment of the Matching Fund Revenues. The Series 2009 Loan Notes are secured by a pledge and assignment of Matching Fund Revenues on a parity basis with the Prior Matching Fund Loan Notes and any Matching Fund Loan Notes securing any Additional Bonds issued under the Indenture. Payment of the Series 2009C Bonds from the Trust Estate is subordinate to the payment of Series 2009A Bonds, the Series 2009B Bonds and the Prior Senior Lien Bonds.

The Series 2009 Bonds are secured by the Trust Estate which includes: (i) moneys deposited or required to be deposited in the Pledged Revenue Account, the Debt Service Accounts, and the respective Debt Service Reserve Subaccounts, including all of the Authority's right and title to, and interest in, the investments held in any Credit Facility held in each of the Debt Service Reserve Subaccounts; (ii) the Matching Fund Loan Notes, including the proceeds and collections therefrom, including all of the Authority's right and title to, and interest in, the Matching Fund Revenues; (iii) all of the Authority's right and title to, and interest in, the Series 2009 Loan Agreement; (iv) all of the Authority's right and title to, and interest in, the proceeds from the sale of Series 2009A Bonds required to be deposited in the Series 2009A Construction Subaccount, and all right and income earned from investments held therein pursuant to the provisions of the Indenture and (v) any and all other property or security interest therein, of every name and nature from time to time hereafter by delivery or by writing of any kind granted, bargained, sold, conveyed, transferred, mortgaged, pledged and assigned as and for additional security under the Indenture.

**The Series 2009C Bonds are secured on a subordinate basis to the Prior Senior Lien Bonds, the Series 2009A Bonds, the Series 2009B Bonds and any Additional Senior Lien Bonds. Payment of the Subordinated Diageo Matching Fund Bonds is subordinate to the payment of the Series 2009 Bonds, the Prior Senior Lien Bonds, any Additional Senior Lien Bonds, the Prior Subordinate Lien Bonds and any Additional Subordinate Lien Bonds. The Subordinated Diageo Matching Fund Bonds are payable solely from Diageo Matching Fund Revenues.**

THE SERIES 2009 BONDS AND THE PRIOR BONDS ARE THE ONLY BONDS CURRENTLY OUTSTANDING UNDER THE INDENTURE. THE INDENTURE PROVIDES FOR THE ISSUANCE OF ADDITIONAL BONDS. THE SERIES 2009 BONDS ARE LIMITED AND SPECIAL OBLIGATIONS OF THE AUTHORITY. PRINCIPAL, PREMIUM, IF ANY AND INTEREST ON THE SERIES 2009 BONDS ARE PAYABLE SOLELY FROM THE PROCEEDS OF REPAYMENT OF THE SERIES 2009 LOAN NOTES AND OTHER AMOUNTS PLEDGED PURSUANT TO THE INDENTURE AS DESCRIBED HEREIN.

THE SERIES 2009 BONDS DO NOT CONSTITUTE A GENERAL OBLIGATION OF THE AUTHORITY, OF THE GOVERNMENT OR OF THE UNITED STATES OF AMERICA. THE AUTHORITY HAS NO TAXING POWER. THE MATCHING FUND REVENUES PLEDGED TO PAY DEBT SERVICE ON THE SERIES 2009 BONDS ARE DERIVED FROM THE MATCHING FUND LOAN NOTES WHICH ARE SPECIAL LIMITED OBLIGATIONS OF THE GOVERNMENT. THE TAXING POWER OF THE GOVERNMENT IS NOT PLEDGED FOR THE MATCHING FUND LOAN NOTES OR THE SERIES 2009 BONDS. THE MATCHING FUND LOAN NOTES ARE SECURED SOLELY BY A PLEDGE OF THE MATCHING FUND REVENUES. THE MATCHING FUND LOAN NOTES DO NOT CONSTITUTE A GENERAL OBLIGATION OF THE UNITED STATES OF AMERICA, NOR SHALL THE UNITED STATES OF AMERICA BE LIABLE THEREON.

### **Matching Fund Loan Notes**

The Series 2009 Bonds will be secured by the four special limited obligation Matching Fund Loan Notes issued by the Government pursuant to the Series 2009 Loan Agreement. The Government will be obligated under the Series 2009 Loan Notes, but solely from the Matching Fund Revenues, to make payments to the Authority in amounts sufficient to pay all principal, premium, if any, and interest on the Series 2009 Bonds when due and to make the amount on deposit in the respective Debt Service Reserve Subaccount equal to the respective Debt Service Reserve Requirements pursuant to the terms of the Indenture. Pursuant to the terms of the Series 2009 Loan Agreement, the Government has authorized the issuance of the Series 2009 Loan Notes as security for each Series of the Series 2009 Bonds. The Series 2009 Loan Notes have been issued in anticipation of the receipt of the Matching Fund Revenues over the full term of the Series 2009 Loan Notes, which Matching Fund Revenues are anticipated to be in excess of the amount necessary to pay all the principal of, premium, if any, and interest on, the Series 2009 Bonds and the Prior Bonds. However, no assurances can be given as to the sufficiency of Matching Fund Revenues for such purpose. (See "MATCHING FUND REVENUES.")

### **Special Escrow Agreement**

The Government, the Authority and The Bank of New York Mellon Trust Company, N.A., as Special Escrow Agent, have entered into a Special Escrow Agreement dated as of May 1, 1998, as amended and supplemented (collectively, the "Special Escrow Agreement"), which provides for the deposit of Matching Fund Revenues into the Special Escrow Account and payment of all Debt Service payments on all Bonds outstanding under the Indenture due in each Fiscal Year, and the funding of any deficiencies in the Debt Service Reserve Account prior to transfer of any excess Matching Fund Revenues

to (i) the Government for its lawful purposes and (ii) to Diageo USVI (as hereinafter defined) pursuant to the terms of the Diageo Agreement (as hereinafter defined). (See “Appendix B – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”)

In connection with the Subordinated Diageo Matching Fund Bonds, the Government, the Authority and The Bank of New York Mellon Trust Company, N.A., as Diageo Special Escrow Agent (the “Diageo Special Escrow Agent”), entered into the Diageo Special Escrow Agreement, pursuant to which Diageo Matching Fund Revenues not required to satisfy any payment obligations related to the Senior Lien Bonds and the Subordinate Lien Bonds shall be transferred by the Special Escrow Agent to the Diageo Special Escrow Agent, as certified by the Calculation Agent, a certified public accounting firm, to be selected by the Government with the consent of Diageo USVI, Inc. (“Diageo USVI”) prior to the date the first anticipated Diageo Matching Fund Revenues are due (the “Calculation Agent”), and used to pay debt service on the Subordinated Diageo Matching Fund Bonds and to make other payments required pursuant to the agreement between the Government and Diageo USVI, dated as of June 17, 2008, as ratified by 2008 V.I. Act 7012 of the Legislature, as supplemented (the “Diageo Agreement”). (See “SECURITY AND SOURCE OF PAYMENT FOR THE SERIES 2009 BONDS” and “THE DIAGEO AGREEMENT.”)

### **Series 2009 Loan Agreement**

Under the Series 2009 Loan Agreement, the Authority shall lend to the Government the sum of \$458,840,000 as a loan which shall be evidenced by the Series 2009 Loan Notes. Pursuant to the Series 2009 Loan Agreement, the Government will pledge and assign its interests in the Matching Fund Revenues and the Special Escrow Agreement to the Trustee as security for the payment of the Series 2009 Loan Notes. The Government has notified the Department of the Interior, Office of Insular Affairs, of the assignment and has instructed such department to transmit all Matching Fund Revenues to the Special Escrow Agent. The Government shall repay the Series 2009 Loan Notes to the Authority in annual installments in accordance with a principal maturity schedule corresponding to the Series 2009 Bonds. The Series 2009 Loan Notes shall bear interest from the issue date payable semi-annually and principal payable annually, immediately upon receipt of the Matching Fund Revenues from the Special Escrow Agent, but in no event later than the second Business Day preceding October 1 of each year. Amounts to be applied to the payment of interest on the Series 2009 Bonds on April 1, 2010 will be derived from Matching Fund Revenues received by the Special Escrow Agent prior to October 1, 2009. Such amounts are currently on deposit with the Authority and will be transferred to the Trustee for such purpose on the date of issuance of the Series 2009 Bonds. Series 2009 Loan Notes may, at the option of the Government, be redeemed, in whole or in part, prior to their maturity at the times, in the manner of and of the same maturities as an optional redemption of the related series of the Series 2009 Bonds and at a redemption price equal to the related Series 2009 Bonds, pursuant to the terms of the Indenture.

The Government has covenanted in the Series 2009 Loan Agreement, among other things, to take all actions necessary to preserve, protect and enhance the pledge of Matching Fund Revenues and to request that the United States deliver and take all steps necessary to ensure the receipt, and the maximization, of the Matching Fund Revenues to be received pursuant to Section 28(b) of the Revised Organic Act. The Government has further covenanted not to take any action or fail to take any actions that would in any way impair the Government’s right to receive the maximum amount of Matching Fund Revenues to which it may be entitled. In the event that the federal government discontinues the payment of Matching Fund Revenues to the Government and substitutes another stream of revenues in lieu thereof (the “Substitute Revenues”), the Government covenants to use its best efforts to pledge such Substitute Revenues to repayment of the Series 2009 Loan Notes. The Government also has covenanted to include in each annual operating budget of the Government submitted to the Legislature an appropriation for the molasses subsidy, as authorized by law, and to use its best efforts to ensure appropriation by the

Legislature of an amount sufficient to satisfy the rum producers' projected subsidy requirement for each Fiscal Year. (See "THE RUM INDUSTRY" and "CRUZAN – Subsidy and Support Payments.")

The Authority also has covenanted in the Series 2009 Loan Agreement to use its best efforts to cause the Government to comply with the terms and the covenants set forth in the Series 2009 Loan Agreement.

### **Flow of Funds**

The Indenture provides that all Matching Fund Revenues received by the Trustee from the Special Escrow Agent and any such other revenues as may be received by the Trustee shall be deposited, upon receipt by the Trustee, to the credit of the Pledged Revenue Account, which is an account held by the Trustee. Amounts in the Pledged Revenue Account shall be transferred annually not later than the Business Day immediately preceding the first day of each Bond Year by the Trustee, in the following amounts and in the following order of priority:

(a) to each Senior Lien Interest Subaccount for (1) any Senior Lien Bonds which are Fixed Interest Rate Bonds and (2) for any Senior Lien Bonds which are not Fixed Interest Rate Bonds, an amount that when added to any amounts on deposit in such Subaccount, will equal 100% of the interest accruing, or to accrue, with respect to all Interest Payment Periods that commence during the current Bond Year for such Bonds, subject in each case to any credit as contemplated in any applicable Supplemental Indenture;

(b) to each Senior Lien Principal Subaccount, an amount that, when added to any amounts on deposit in such Subaccount, will equal 100% of the principal due on the next succeeding Principal Payment Date;

(c) to each Senior Lien Credit Subaccount, an amount sufficient to pay any principal and interest then owing to a Credit Provider under the applicable Supplemental Indenture and Credit Agreement by reason of any drawing of amounts under the related Credit Facility for the payment of principal of, or interest or premium on, any Senior Lien Bonds subject to any required transfer, under other provisions of the Indenture or a Supplemental Indenture;

(d) to each Senior Lien Redemption Subaccount, the amount of Revenues required to redeem Senior Lien Bonds subject to redemption pursuant to the related Supplemental Indenture;

(e) to the Senior Lien Debt Service Reserve Account, and ratably to each subaccount therein (if applicable), the amount of any transfer required by the Indenture to restore any deficiency in the Senior Lien Debt Service Reserve Account and any Subaccount therein (or to pay any amounts there owing to a Credit Provider pursuant to a Credit Agreement relating to a Senior Lien Debt Service Reserve Account Credit Facility);

(f) to each Senior Lien Expense Subaccount, any amounts then due and owing to the Trustee, any Paying Agent, Bond Registrar, Credit Provider, the Special Escrow Agent, or other Fiduciary which are Bond Service Charges or Bond Related Costs for Senior Lien Bonds, and the Authority's Annual Administrative Fee, which otherwise have not been provided for above;

(g) to each Rebate Account for Senior Lien Bonds;

(h) to each Subordinate Lien Interest Subaccount for (1) any Subordinate Lien Bonds which are Fixed Interest Rate Bonds, and (2) any Subordinate Lien Bonds which are not Fixed

Interest Rate Bonds (beginning in the first month of each Bond Year for Subordinate Lien Bonds which are not Fixed Rate Bonds) an amount that, when added to any amounts on deposit in such Subaccount, will equal 100% of that portion of the interest accruing, or to accrue, with respect to all Interest Payment Periods that commence during the current Bond Year for such Bonds, subject in each case to any credit;

(i) to each Subordinate Lien Principal Subaccount, an amount that, when added to any amounts on deposit in such Subaccount, will equal 100% of the principal due on the next succeeding Principal Payment Date;

(j) to each Subordinate Lien Credit Subaccount, an amount sufficient to pay any principal and interest then owing to a Credit Provider under the applicable Supplemental Indenture and Credit Agreement by reason of any drawing of amounts under the related Credit Facility for the payment of principal of, or interest or premium on, any Subordinate Lien Bonds, provided, that the amounts of the transfers shall be reduced to the extent of moneys previously transferred, or required to be transferred, to said Accounts under other provisions of the Indenture or a Supplemental Indenture;

(k) to each Subordinate Lien Redemption Subaccount, the amount of Revenues required to redeem Subordinate Lien Bonds subject to redemption pursuant to the related Supplemental Indenture;

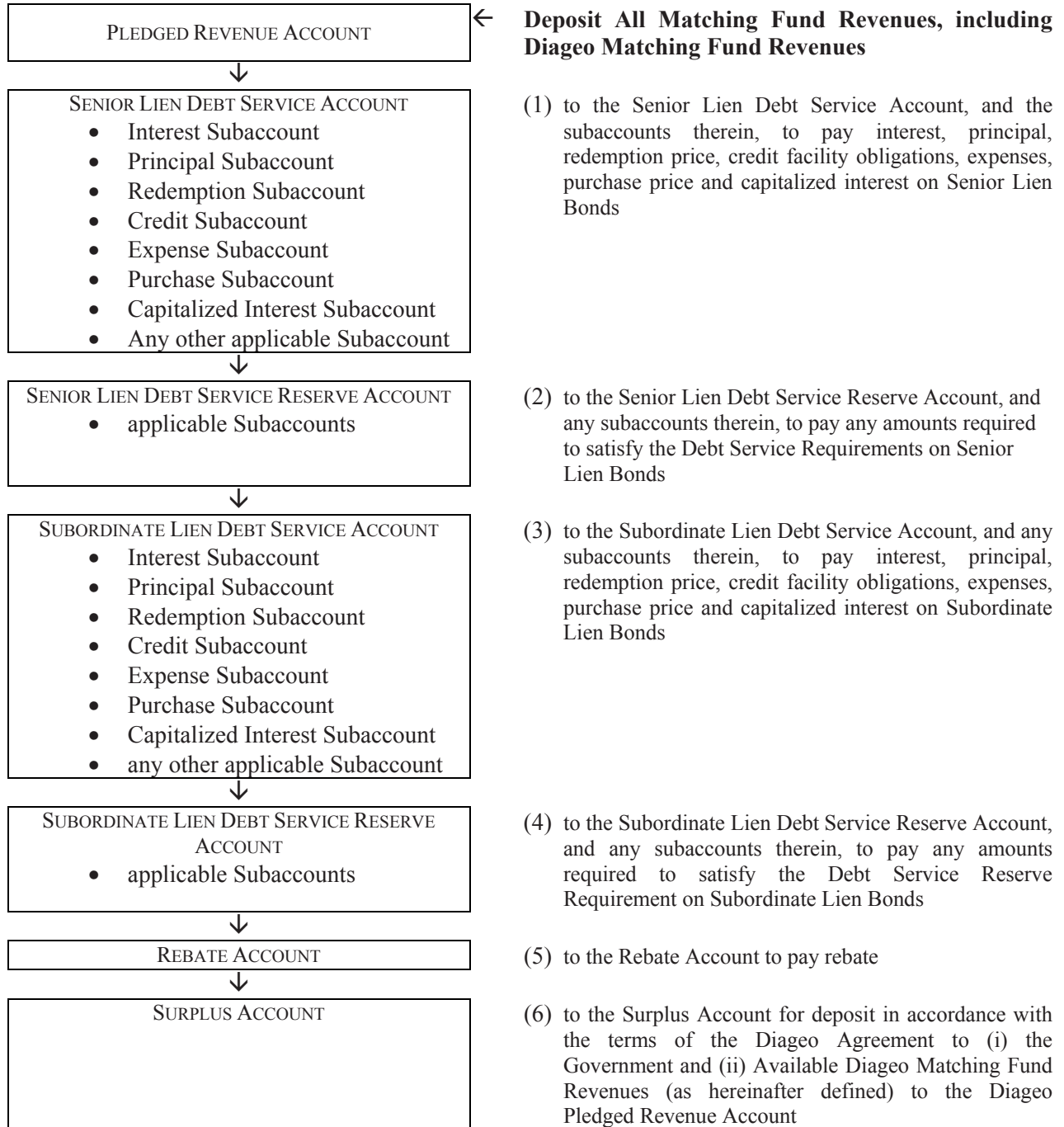
(l) to each Subordinate Lien Debt Service Reserve Account, and ratably to each Subaccount therein (if applicable), the amount of any transfer required by the Indenture to restore any deficiency in the Subordinate Lien Debt Service Reserve Account and any Subaccount therein (or to pay any amounts then owing to a Credit Provider pursuant to a Credit Agreement relating to a Subordinate Lien Debt Service Reserve Account Credit Facility);

(m) to each Subordinate Lien Expense Subaccount, any amounts then due and owing to the Trustee, any Paying Agent, Bond Registrar, Credit Provider, Special Escrow Agent or other Fiduciary which are Bond Service Charges or Bond Related Costs for Subordinate Lien Bonds and the Authority's Annual Administrative Fee which otherwise have not been provided for above;

(n) to each Rebate Account for Subordinate Lien Bonds;

(o) except as may be provided in one or more Supplemental Indentures to the contrary, to the Surplus Account for application pursuant to the Indenture.

## FLOW OF MATCHING FUND REVENUES - SENIOR LIEN BONDS



Amounts in the Surplus Account may be (i) transferred to the Debt Service Accounts and the Debt Service Reserve Accounts to maintain the required balances if no other funds are available for such purposes, (ii) transferred to the Construction Account to pay cost of approved projects and (iii) used for any other purpose as directed by the Authority or authorized by law.

In connection with the issuance of the Subordinated Diageo Matching Fund Bonds, amounts in the Surplus Account equal to surplus Matching Fund Revenues collected from sales of rum in the United

States produced at the Diageo Facility (as hereinafter defined) (the “Diageo Matching Fund Revenues”) after payment of all amounts required under the Indenture, including the replenishment of any deficiency in a Debt Service Reserve Subaccount, as certified by the Calculation Agent (the “Available Diageo Matching Fund Revenues”), will be transferred to the Diageo Special Escrow Agent who will deposit such amounts into the Diageo Pledged Revenue Account, as required in accordance with the terms of the Diageo Agreement.

### **Debt Service Reserve Account**

In connection with the issuance of each series of Bonds, the Trustee shall initially fund each Debt Service Reserve Subaccount, as applicable, through a deposit to the credit of the respective Subaccount from the proceeds of each Series of Bonds in an amount equal to the applicable Debt Service Reserve Requirement (if any) established in the Supplemental Indenture or, in lieu thereof, the Authority may cause a Debt Service Reserve Subaccount Credit Facility to be delivered to the Trustee for such purpose. A valuation of each Debt Service Reserve Subaccount shall be made on October 1 in each year pursuant to the Indenture. In the event the amount on deposit in such respective Debt Service Reserve Subaccount is less than the applicable Debt Service Reserve Requirement because of any valuation of the investment securities or due to a payment made from such Subaccount to cure an insufficiency of funds on any Interest Payment Date or Principal Payment Date, the Authority shall be required to restore the deficiency caused thereby by transfers of Matching Fund Revenues as described below. The Trustee shall notify the Authority and the Special Escrow Agent of the amount, if any, of the deficiency or excess in each Debt Service Reserve Subaccount.

No later than the second Business Day preceding the first day of the next Bond Year (which is defined in the Indenture as the Fiscal Year) (after the transfers, if any, to the Debt Service Account pursuant to the Indenture), the Authority shall transfer or provide for the transfer to the Trustee for deposit in each respective Debt Service Reserve Subaccount, an amount not exceeding the aggregate amount necessary, together with the amounts already on deposit in each Debt Service Reserve Subaccount to make the amounts on deposit in such Debt Service Reserve Subaccount equal to the applicable Debt Service Reserve Requirement, from Matching Fund Revenues then on deposit in the Special Escrow Fund established under the Special Escrow Agreement with respect to the Senior Lien Debt Service Reserve Account and the Subordinate Lien Debt Service Reserve Account, respectively. The Trustee shall send written direction to the Special Escrow Agent (with a copy to the Authority) to transfer such amount, to the extent available after transfer pursuant to the Indenture, from the Special Escrow Fund established under the Special Escrow Agreement.

The Debt Service Reserve Requirement with respect to each series of the Series 2009 Bonds shall mean an amount equal to the least of (i) the maximum principal and interest due on such series of the Series 2009 Bonds in the current or any future Fiscal year, (ii) 10% of the original stated principal amount of such series of the Series 2009 Bonds (or 10% of the issue price of such series of the Series 2009 Bonds, if required by the Code), or (iii) 125% of the average annual principal and interest due on such series of the Series 2009 Bonds in the current and each future Fiscal Year, as specified in the Indenture.

The Debt Service Reserve Requirement with respect to the Prior Bonds was established at an amount equal to the least of (i) the maximum principal and interest due on the Senior Lien Bonds in the current or any future Fiscal Year, (ii) 10% of the original stated principal amount of the Senior Lien Bonds (or 10% of the issue price of the Senior Lien Bonds if required by the Code), or (iii) 125% of the average annual principal and interest due on the Senior Lien Bonds in the current and each future Fiscal Year, as specified in the Indenture. The Debt Service Reserve Requirement with respect to the Subordinate Lien Bonds was established at an amount equal to the least of (i) the maximum principal amount of the Subordinate Lien Bonds in the current or any future Fiscal Year, (ii) 10% of the original



stated principal amount of the Subordinate Lien Bonds (or 10% of the issue price of the Subordinate Lien Bonds if required by the Code), or (iii) 125% of the average annual principal and interest due on the Subordinate Lien Bonds in the current and each future Fiscal Year, as specified in the Indenture.

### **Additional Bonds**

All of the Bonds issued under a Supplemental Indenture shall collectively be a charge and lien upon the Trust Estate as provided in the Indenture and such charge and lien shall be prior to any other charge and lien upon the Trust Estate. Except as permitted in the Indenture, no obligations payable from Matching Fund Revenues or secured by a lien on the Trust Estate (except as to any Credit Facility or Liquidity Facility which secures Bonds or a specific Series of Bonds) shall be hereafter issued.

So long as no Event of Default has occurred and is continuing, the Authority may from time to time enter into a Supplemental Indenture providing for the issuance of Additional Bonds pursuant to the Indenture. Additional Senior Lien Bonds may be issued if the conditions set forth in the Indenture are met, including that (i) the average Matching Fund Revenues received by the Government for the immediately preceding three Fiscal Years prior to the issuance of such Additional Senior Lien Bonds equaled or exceeded 150% of the amount of maximum annual Adjusted Debt Service Requirement (including such proposed Additional Bonds) in the current or any subsequent Bond Year, (ii) the average Matching Fund Revenues projected to be received by the Government in the next succeeding two Fiscal Years following the issuance of the Additional Bonds, without regard to the projected Diageo Incremental Cover Over Revenues, as certified by the Calculation Agent, are equal to or exceed 150% of the Adjusted Debt Service Requirement in the current or any subsequent Bond Year on Outstanding Senior Lien Bonds and such additional Senior Lien Bonds, and (iii) the average Matching Fund Revenues projected to be received by the Government for the next succeeding two Fiscal Years following the issuance of the additional Senior Lien Bonds, without regard to the projected Diageo Incremental Cover Over Revenues, as certified by the Calculation Agent, are equal to or exceed 120% of the Adjusted Debt Service Requirement in the current or any subsequent Bond Year on Outstanding Senior Lien Bonds, such Additional Senior Lien Bonds and Outstanding Subordinate Lien Bonds.

Additional Subordinate Lien Bonds may be issued under the Indenture if the conditions set forth in the Indenture are met, including that (i) the average Matching Fund Revenues received by the Government for the immediately preceding three Fiscal Years available after payment of Debt Service on Outstanding Senior Lien Bonds and any Senior Lien Bonds to be issued simultaneously with such additional Subordinate Lien Bonds (the "Available Matching Fund Revenues") equaled or exceeded 125% of the amount of maximum Adjusted Debt Service Requirement in the current or any subsequent Bond Year; (ii) the average Available Matching Fund Revenues projected to be received by the Government in the next succeeding two Fiscal Years following the issuance of the additional Subordinate Lien Bonds, without regard to the projected Diageo Incremental Cover Over Revenues, as certified by the Calculation Agent, are equal to or exceed 125% of the Adjusted Debt Service Requirement in the current or any subsequent Bond Year on Outstanding Subordinate Lien Bonds and such Additional Subordinate Lien Bonds; and (iii) the average Matching Fund Revenues projected to be received by the Government for the next succeeding two Fiscal Years following issuance of the Additional Subordinate Lien Bonds, without regard to the projected Diageo Incremental Cover Over Revenues, as certified by the Calculation Agent, are equal to or exceed 120% of the Adjusted Debt Service Requirement in the current or any subsequent Bond Year on Outstanding Subordinate Lien Bonds, such Additional Subordinate Lien Bonds and Outstanding Senior Lien Bonds.

The Authority has the right to issue other bonds, notes or other evidences of indebtedness that are not secured by the Indenture and are not secured by a pledge of Matching Fund Revenues.

## DEBT SERVICE REQUIREMENTS

### AGGREGATE DEBT SERVICE

Period Ending	Revenue Bonds Series 2009A-1 (Senior Lien)	Taxable Revenue Bonds, Series 2009A-2 (Senior Lien)	Revenue Refunding Bonds Series 2009B (Senior Lien)	Revenue Refunding Bonds Series 2009C (Subordinate Lien)	Series 2004A Bonds (Senior Lien)	Series 2009A (Subordinated Diageo Matching Fund Bonds)	Aggregate Debt Service
9/30/2010	\$1,941,657.69	\$124,704.17	\$5,659,512.50	\$2,072,087.50	\$2,045,043.75	\$8,351,337.50	\$20,194,343.11
9/30/2011	5,478,543.76	2,229,500.00	16,729,000.00	6,338,000.00	7,624,462.50	16,702,675.00	55,102,181.26
9/30/2012	5,479,068.76	6,749,750.00	27,907,875.00	10,991,750.00	7,618,712.50	16,702,675.00	75,449,831.26
9/30/2013	5,478,243.76		27,906,250.00	10,991,125.00	7,613,712.50	16,702,675.00	68,692,006.26
9/30/2014	5,480,993.76		27,909,750.00	10,988,875.00	7,608,962.50	20,621,475.00	72,610,056.26
9/30/2015	5,479,768.76		27,911,250.00	10,828,250.00	7,603,962.50	20,621,575.00	72,444,806.26
9/30/2016	5,477,706.26		27,913,625.00	10,989,375.00	7,592,431.25	20,623,468.75	72,596,606.26
9/30/2017	5,479,681.26		27,909,750.00	10,889,750.00	7,583,318.75	20,619,025.00	72,481,525.01
9/30/2018	5,479,693.76		27,912,250.00	10,877,750.00	7,576,212.50	20,622,306.25	72,468,212.51
9/30/2019	5,478,396.88		27,913,500.00	10,865,250.00	7,570,325.00	20,621,625.00	72,449,096.88
9/30/2020	5,480,900.00		27,911,000.00	10,700,125.00	7,564,868.75	20,620,462.50	72,277,356.25
9/30/2021	5,478,025.00		27,912,000.00	9,531,125.00	7,554,187.50	20,621,134.38	71,096,471.88
9/30/2022	5,480,900.00		27,908,625.00	10,992,125.00	7,547,493.75	20,622,228.13	72,551,371.88
9/30/2023	5,479,150.00		11,718,000.00	7,964,250.00	7,538,868.75	20,623,178.13	53,323,446.88
9/30/2024	5,477,775.00		3,069,875.00		7,527,525.00	20,621,996.88	36,697,171.88
9/30/2025	5,481,200.00		27,844,250.00		7,522,412.50	20,621,531.25	61,469,393.75
9/30/2026	5,480,125.00		8,722,750.00			20,619,462.50	34,822,337.50
9/30/2027	5,479,000.00					20,618,306.25	26,097,306.25
9/30/2028	5,480,875.00					20,620,246.88	26,101,121.88
9/30/2029	5,480,375.00					20,622,303.13	26,102,678.13
9/30/2030	5,477,250.00					20,621,493.75	26,098,743.75
9/30/2031	5,481,000.00					20,621,568.75	26,102,568.75
9/30/2032	5,481,125.00					20,622,843.75	26,103,968.75
9/30/2033	5,477,375.00					20,618,537.50	26,095,912.50
9/30/2034	5,479,250.00					20,619,431.25	26,098,681.25
9/30/2035	5,481,125.00					20,620,800.00	26,101,925.00
9/30/2036	5,477,625.00					20,617,918.75	26,095,543.75
9/30/2037	5,478,250.00					20,620,556.25	26,098,806.25
9/30/2038	5,477,375.00					20,618,143.75	26,095,518.75
9/30/2039	5,479,375.00						5,479,375.00
9/30/2040	5,478,625.00						5,478,625.00
	\$166,320,454.65	\$9,103,954.17	\$380,759,262.50	\$135,019,837.50	\$115,692,500.00	\$573,980,981.28	\$1,380,876,990.10

## SOURCES AND USES OF FUNDS

*The estimated sources and uses of the proceeds of the Series 2009 Bonds, together with amounts available under the Indenture, are expected to be applied as follows:*

SOURCES OF FUNDS	<u>Series 2009A-1</u>	<u>Series 2009A-2</u>	<u>Series 2009B</u>	<u>Series 2009C</u>	<u>Total</u>
<u>Par Amount</u>	\$86,350,000.00	\$8,650,000.00	\$266,330,000.00	\$97,510,000.00	\$458,840,000.00
<u>Net Original Issue Premium</u>	404,496.15	60,278.50	13,591,854.70	4,161,156.70	18,217,786.05
<u>Amount from Prior Bonds Senior Lien Debt Service Reserve Subaccount</u>			28,834,982.62		28,834,982.62
<u>Amount from Prior Bonds Subordinate Lien Debt Service Reserve Fund Subaccount</u>				11,399,517.38	11,399,517.38
Total Sources	\$86,754,496.15	\$8,710,278.50	\$308,756,837.32	\$113,070,674.08	\$517,292,286.05
<b>USES OF FUNDS</b>					
<u>Deposit to Construction Account</u>	\$78,411,025.66	\$7,600,000.00			\$86,011,025.66
<u>Deposit to Escrow Accounts</u>			\$278,455,071.47	\$102,036,948.28	380,492,019.75
<u>Deposit to Series 2009 Senior Lien Debt Service Reserve Subaccounts</u>	5,481,200.00	865,000.00	27,913,625.00		34,259,825.00
<u>Deposit to Series 2009 Subordinate Lien Debt Service Reserve Subaccount</u>				10,167,115.67	10,167,115.67
<u>Costs of Issuance<sup>1</sup></u>	2,862,270.49	245,278.50	2,388,140.85	866,610.13	6,362,299.97
Total Uses	\$86,754,496.15	\$8,710,278.50	\$308,756,837.32	\$113,070,674.08	\$517,292,286.05

<sup>1</sup> The costs of issuance of the Series 2009 Bonds includes legal fees, Trustee fees, financial advisor fees, underwriter's discount, rating agency fees and other costs incurred in connection with the issuance of the Series 2009 Bonds.

## MATCHING FUND REVENUES

### General

The Secretary of the U.S. Department of the Treasury (the “Secretary of the Treasury”) is directed to make certain transfers to the Government of certain excise taxes imposed and collected under the Code in any Fiscal Year on certain products produced in the Virgin Islands and exported to the United States mainland from the Virgin Islands. Rum is the only product presently produced in the Virgin Islands and exported to the United States that is subject to federal excise tax which qualifies for transfer to the Government under the applicable provisions of the Revised Organic Act and the Code. The term “Matching Fund Revenues” is used to denote these payments.

The Treasury collects the federal excise taxes levied on rum exported to the United States from the Virgin Islands from the U.S. rum distributors on all rum that is shipped to the United States in bulk and from the Virgin Islands rum distributors on all rum that is bottled in the Virgin Islands and submits monthly reports of the federal excise tax revenues to the United States Department of Interior (“DOI.”)

In September of each year, the Governor requests a Matching Fund Revenue prepayment from the DOI that is calculated by the OMB based on an estimate of the amount of federal excise taxes to be collected in the ensuing Fiscal Year as well as any required adjustments. Based on the Governor’s request, the DOI calculates the amount of the federal excise taxes that will be transferred to the Virgin Islands and requests the Treasury to transfer the prepayment for the ensuing Fiscal Year to the Special Escrow Account of the Government held by the Special Escrow Agent prior to September 30 of the immediately preceding Fiscal Year. (See “SECURITY AND SOURCE OF PAYMENT FOR THE SERIES 2009 BONDS – Special Escrow Agreement” and “– Flow of Funds.”)

This prepayment is subject to subsequent adjustment based on the amount of Matching Fund Revenues actually collected by the Government and the amount of federal excise taxes actually collected by the Treasury during such Fiscal Year. Such adjustments are made to prepayment advances paid to the Government for the second succeeding Fiscal Year. Adjustment payments may also be requested by the Governor and made by the DOI during any Fiscal Year. The amount required to be remitted to the Government by the Secretary of the Treasury is limited to an amount no greater than the total amount of local duties, taxes and fees collected by the Government in the applicable Fiscal Year.

The federal excise tax on rum exports from the Virgin Islands to the United States currently accounts for all of the Matching Fund Revenues. To date, the only producer of rum in the Virgin Islands has been Cruzan. Pursuant to the Diageo Agreement, Diageo USVI has agreed to build the Diageo Project on St. Croix and to begin production of all of its Captain Morgan rum for export to the United States commencing in 2012. The Subordinated Diageo Matching Fund Bonds were issued on a subordinated basis to the Prior Senior Lien Bonds and any additional Senior Lien Bonds and Prior Subordinate Lien Bonds and any additional Subordinate Lien Bonds (including the Series 2009 Bonds) issued pursuant to the Indenture. (See “THE RUM INDUSTRY” and APPENDIX D – “VERIFICATION AND PROJECTION OF MATCHING FUND REVENUES FROM RUM SHIPMENTS TO THE US.”) Payments on the Subordinated Matching Fund Diageo Bonds and certain annual payments payable to Diageo USVI from Available Diageo Matching Fund Revenues will be made pursuant to the terms of the Diageo Agreement and as directed by the Calculation Agent pursuant to the terms of the Special Escrow Agreement. (See “SOURCES AND USES OF PAYMENT FOR THE SERIES 2009 BONDS – Special Escrow Agreement.”)

## Cover Over Rate

The federal excise tax rate and the cover over rate (the “Cover Over Rate”) are set by Congress and codified in Sections 5001(a)(1) and 7652(f) of the Code. The federal excise tax on distilled spirits produced in, or imported into, the United States has over the years ranged from \$10.50 per proof gallon to \$13.50 per proof gallon. Until 1984, the entire amount of such excise tax qualified for transfer to the Government. As part of the Deficit Reduction Act of 1984, Congress increased the federal excise tax on distilled spirits from \$10.50 per proof gallon to \$12.50 per proof gallon, but capped the Cover Over Rate at \$10.50 per proof gallon. As part of the Omnibus Budget Reconciliation Act of 1990, Congress again increased the federal excise tax rate on distilled spirits to \$13.50 per proof gallon, but maintained the cap on the Cover Over Rate at \$10.50. As part of the Omnibus Budget Reconciliation Act of 1993, Congress increased the Cover Over Rate paid to the Government, through September 30, 1998, from \$10.50 per proof gallon to \$11.30 per proof gallon. As part of the Tax Relief Extension Act of 1999, Congress increased the Cover Over Rate to \$13.25 per proof gallon from July 1, 1999, through December 31, 2001. As part of the Job Creation and Worker Assistance Act of 2002, Congress extended the \$13.25 per proof gallon Cover Over Rate from January 1, 2002, through December 31, 2003. As part of the Working Families Tax Relief Act of 2004, Congress extended the \$13.25 per proof gallon Cover Over Rate from January 1, 2004, through December 31, 2005. As part of the Tax Relief and Health Care Act of 2006, Congress extended the \$13.25 per proof gallon Cover Over Rate from January 1, 2006, through December 31, 2007. As part of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Congress again extended the \$13.25 per proof gallon Cover Over Rate from January 1, 2008, through December 31, 2009.

The rate of reimbursement is subject to change by Congress and no assurances can be given as to how, when or whether Congress might change the Cover Over Rate. Diageo USVI is permitted to terminate the Diageo Agreement and will have no further obligation to develop the Diageo Project in the event that the Cover Over Rate is reduced to less than \$10.50 per proof gallon of rum and will have no obligation to pay liquidated damages to the Government upon termination of the Diageo Agreement in such event. (See “DIAGEO – Diageo Agreement.”)

Set forth below is a brief synopsis of the history of the federal excise tax rates and corresponding Cover Over Rates per proof gallon of rum since 1984.

<u>Year</u>	<u>Excise Tax Rate</u> *	<u>Cover Over Rate</u> *	<u>Legislation</u>
1984	\$12.50	Lesser of \$10.50 or the excise tax rate	The Deficit Reduction Act of 1984
1990	\$13.50	\$10.50	Omnibus Budget Reconciliation Act of 1990
1993	\$13.50	\$11.30	Omnibus Budget Reconciliation Act of 1993
1998	\$13.50	Lesser of \$10.50 or the excise tax rate	Section 7652f of the U.S. Code
1999-2002	\$13.50	\$13.25	Tax Relief Extension Act of 1999
2002-2004	\$13.50	\$13.25	Job Creation and Worker Assistance Act of 2002
2004-2005	\$13.50	\$13.25	Middle Class Tax Relief Extension Act of 2004
2006-2007	\$13.50	\$13.25	Tax Relief and Health Care Act of 2006
2008-2009	\$13.50	\$13.25	Emergency Economic Stabilization Act of 2008

\* Per proof gallon

*MATCHING FUND REVENUES ARE DERIVED FROM CERTAIN EXCISE TAXES PAYABLE ON PRODUCTS, PRINCIPALLY RUM, PRODUCED IN THE VIRGIN ISLANDS AND IMPORTED INTO THE UNITED STATES. THERE CAN BE NO ASSURANCE THAT VIRGIN ISLANDS RUM*

*PRODUCTION OR THE FEDERAL EXCISE TAX WILL BE MAINTAINED AT LEVELS SUFFICIENT TO GENERATE EXCISE TAXES AND MATCHING FUND REVENUES IN AMOUNTS SUFFICIENT TO PAY THE DEBT SERVICE ON THE SERIES 2009 BONDS. (SEE “THE RUM INDUSTRY” AND “BONDHOLDER RISKS.”)*

## **Verification and Projection of Matching Fund Revenues**

IHS Global Insight (USA), Inc. (“Global Insight”), an economic consulting firm, was engaged to verify Matching Fund Revenues received by the Government from Fiscal Year 1992 through Fiscal Year 2008 and to project Matching Fund Revenues for Fiscal Years 2009 through 2038. A copy of their report is attached to this Official Statement. (See APPENDIX D – “VERIFICATION AND PROJECTION OF MATCHING FUND REVENUES FROM RUM SHIPMENTS TO THE US.”) Global Insight’s review of the records that document the Matching Fund Revenue collection and transfer process concluded that annual Matching Fund Revenues transferred to the Virgin Islands during the Fiscal Year 1992 through Fiscal Year 2008 period were consistent with excise taxes collected from United States distillers on purchases of bulk rum produced in the Virgin Islands and Customs duties levied on cased Virgin Islands rum. The following is a summary of Matching Fund Revenues received by the Government for Fiscal Years 2005 through 2009.

### **Historical Matching Fund Revenues<sup>1</sup>**

Fiscal Years 2005 - 2009  
(\$000's)

	<b>2005<sup>(5)</sup></b>	<b>2006</b>	<b>2007</b>	<b>2008<sup>(2)</sup></b>	<b>2009</b>
Advance Received for Current Fiscal Year [A]	63,635	87,864	79,460	80,746	75,065
Payment Adjustment for Two Fiscal Years Prior [B]	3,326	(9,152)	(8,165)	(7,582)	-
Estimated Adjustment for Two Fiscal Years Later [C]	8,165	(7,833)	15,415	18,775	-
<b>Actual Matching Fund Revenues for Current Fiscal Year [A+B+C = D]</b>	<b>75,126</b>	<b>70,879</b>	<b>86,710</b>	<b>91,939</b>	<b>75,065</b>
Matching Fund Revenues for Fiscal Year [D]	75,126	70,879	86,710	91,939	75,065
Senior Lien Matching Fund Maximum Debt Service [E] <sup>3</sup>	29,946	35,685	36,249	36,245	36,248
Senior Lien Debt Service Coverage (i) [A/E = F]	2.51	1.99	2.39	2.54	2.07
Subordinate Lien Matching Fund Maximum Debt Service [G] <sup>4</sup>	11,446	11,446	11,446	11,446	11,323
Subordinate Lien Matching Fund Debt Service Coverage [(D-E)/G = H]	3.95	3.07	4.41	4.87	3.43
Aggregate (Senior and Subordinate Lien Debt Service Coverage) [D/(E+G) = I]	1.81	1.50	1.82	1.93	1.58

(1) *United States Virgin Islands Office of Management and Budget.*

(2) *Represents the Fiscal Year 2007 adjustment of \$15,415,000 less the Fiscal Year 2006 adjustment of \$7,833,000.*

(3) *Actual Senior Debt Service.*

(4) *Actual Subordinate Debt Service*

(5) *Adjustment for earnings vs. advance for Fiscal Years 2002 and 2003. Fiscal Year 2002 Advance was calculated at \$63,089,000 instead of \$60,121,000, resulting in a difference of \$2,968,000.*

In connection with its revenue projections, Global Insight developed a model to project future Matching Fund Revenues. The model, the Constant Market Share Model as set forth in the table following labeled “**Projected Matching Fund Revenues and Pro Forma Debt Service Coverage – Constant Market Share Projection**”, projects Matching Fund Revenues as a function of historical rum excise tax revenues, resulting in projected Matching Fund Revenues. (See APPENDIX D – “VERIFICATION AND PROJECTION OF VIRGIN ISLAND MATCHING FUND REVENUES FROM RUM SHIPMENTS TO THE US.”)

This model assumes that (i) a constant \$13.25 per proof gallon rate will be eligible for transfer to the Government, (ii) both Cruzan and Diageo USVI will be able to maintain their respective current shares of the U.S. market, (iii) after reaching capacity, production at both companies will remain constant through 2038, and (iv) Diageo USVI will only ship nine million proof gallons in Fiscal Year 2012.

Global Insight also prepared an alternative projection assuming that the Cover Over Rate paid to the Government per proof gallon was \$10.50 rather than the current rate of \$13.25 per proof gallon as set forth in the table following the table labeled “**Projected Matching Fund Revenues and Pro Forma Debt Service Coverage at Permanent Rate - Alternative Projection: Lower Cover Over Rate**”. (See APPENDIX D – “VERIFICATION AND PROJECTION OF MATCHING FUND REVENUES FROM RUM SHIPMENTS TO THE US.”)

**Projected Matching Fund Revenues and Pro Forma Debt Service Coverage<sup>1</sup>**  
**Constant Market Share Projection at \$13.25 Excise Tax Rate**  
Fiscal Years 2010 - 2015  
(\$000's)

*Projected Matching Fund Revenues - IHS Global Insight Constant Market Share Projection Rate*

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Projected Cruzan Revenues at \$13.25 excise Tax Rate [A]	\$101,336	\$102,473	\$104,571	\$107,954	\$111,366	\$114,974
Projected Diageo Revenues at \$13.25 excise Tax Rate [B]	-	-	119,250	167,472	172,766	178,363
<b>Total Revenues [A+B = C]</b>	<b>\$101,336</b>	<b>\$102,473</b>	<b>\$223,821</b>	<b>\$275,426</b>	<b>\$284,132</b>	<b>\$293,337</b>
<b>Projected Debt Service Coverage Based on: IHS Global Insight Constant Market Share Projection Rate</b>						
Total Debt Service on Senior Indenture Bonds [D] <sup>2</sup>	\$47,755	\$47,755	\$47,755	\$47,755	\$47,755	\$47,755
Senior Indenture Coverage [C/D = E]	2.12	2.15	4.69	5.77	5.95	6.14
SENIOR Coverage – Cruzan Revenues Only [A/D = F]	2.12	2.15	2.19	2.26	2.33	2.41
Subordinate Lien Matching Fund Maximum Debt Service [G] <sup>3</sup>	\$10,992	\$10,992	\$10,992	\$10,992	\$10,992	\$10,992
Subordinate Lien Matching Fund Debt Service Coverage [(C-D)/G = H]	4.87	4.98	16.02	20.71	21.50	22.34
SUBORDINATE Coverage – Cruzan Revenues Only [(A-D)/G = I]	4.87	4.98	5.17	5.48	5.79	6.12
Aggregate (Senior and Subordinate Lien Debt Service Coverage) [C/(D+G) = J]	1.72	1.74	3.81	4.69	4.84	4.99
Aggregate (Senior and Subordinate Lien Debt Service Coverage) - Cruzan Revenues Only [D/(E+G) = K]	1.72	1.74	1.78	1.84	1.90	1.96
2009A Diageo Subordinate Lien Matching Fund Debt Service [L] <sup>4</sup>	-	-	20,623	20,623	20,623	20,623
2009A Diageo Subordinate Lien Matching Fund Debt Service Coverage [(C-D-G)/L = M]	-	-	8.00	10.51	10.93	11.37
Aggregate (Senior, Subordinate and Diageo Subordinate Lien Debt Service Coverage) [C/(D+G+L) = N]	-	-	2.82	3.47	3.58	3.70
Aggregate (Senior, Subordinate and Diageo Subordinate Lien Debt Service Coverage) - Cruzan Revenues Only [A/(D+G+L) = O]	-	-	1.32	1.36	1.40	1.45

*(1) IHS Global Insight has provided the revenue projections.*

*(2) The debt service calculation consists of maximum annual aggregate principal and interest payments due on the Series 2004A, Series 2009A-1, Series 2009A-2, and Series 2009B Senior Lien Bonds.*

*(3) The debt service calculation consists of maximum annual principal and interest payments due on the Series 2009C Bonds.*

*(4) Diageo debt service for 2010 & 2011 is paid from the Diageo capitalized interest fund.*



**Projected Matching Fund Revenues and Pro Forma Debt Service Coverage at Permanent Rate<sup>1</sup>**  
**Alternative Projection: Lower Cover Over \$10.50 Excise Tax Rate**

Fiscal Years 2010 - 2015

(\$000's)

*Projected Matching Fund Revenues - IHS Global Insight Lower Cover Over Rate*

	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Projected Cruzan Revenues at \$10.50 Excise Tax Rate [A]	\$80,304	\$81,205	\$82,868	\$85,549	\$88,253	\$91,112
Projected Diageo Revenues at \$10.50 Excise Tax Rate [B]	-	-	94,500	132,714	136,909	141,344
Adjusted Projected Diageo Revenues [54% of B = C]	-	-	-	-	-	-
<b>Total Revenues [A+B = C]</b>	<b>\$80,304</b>	<b>\$81,205</b>	<b>\$177,368</b>	<b>\$218,263</b>	<b>\$225,162</b>	<b>\$232,456</b>
<b>Projected Matching Fund Revenues - IHS Global Insight Lower Cover Over Rate</b>						
Total Debt Service on Senior Indenture Bonds [D] <sup>2</sup>	\$47,755	\$47,755	\$47,755	\$47,755	\$47,755	\$47,755
Senior Indenture Coverage [C/D = E]	1.68	1.70	3.71	4.57	4.71	4.87
SENIOR Coverage – Cruzan Revenues Only [A/D = F]	1.68	1.70	1.74	1.79	1.85	1.91
Subordinate Lien Matching Fund Maximum Debt Service [G] <sup>3</sup>	\$10,992	\$10,992	\$10,992	\$10,992	\$10,992	\$10,992
Subordinate Lien Matching Fund Debt Service Coverage [(C-D)/G = H]	2.96	3.04	11.79	15.51	16.14	16.80
SUBORDINATE Coverage – Cruzan Revenues Only [(A-D)/G = I]	2.96	3.04	3.19	3.44	3.68	3.94
Aggregate (Senior and Subordinate Lien Debt Service Coverage) [C/(D+G) = J]	1.37	1.38	3.02	3.72	3.83	3.96
Aggregate (Senior and Subordinate Lien Debt Service Coverage) - Cruzan Revenues Only [D/(E+G) = K]	1.37	1.38	1.41	1.46	1.50	1.55
2009A Diageo Subordinate Lien Matching Fund Debt Service [L] <sup>4</sup>	-	-	20,623	20,623	20,623	20,623
2009A Diageo Subordinate Lien Matching Fund Debt Service Coverage [(C-D-G)/L = M]	-	-	5.75	7.73	8.07	8.42
Aggregate (Senior, Subordinate and Diageo Subordinate Lien Debt Service Coverage) [C/(D+G+L) = N]	-	-	2.23	2.75	2.84	2.93
Aggregate (Senior, Subordinate and Diageo Subordinate Lien Debt Service Coverage) - Cruzan Revenues Only [A/(D+G+L) = O]	-	-	1.04	1.08	1.11	1.15

*(1) IHS Global Insight has provided the revenue projections.*

*(2) The debt service calculation consists of maximum annual aggregate principal and interest payments due on the Series 2004A, Series 2009A-1, Series 2009A-2, and Series 2009B Senior Lien Bonds.*

*(3) The debt service calculation consists of maximum annual principal and interest payments due on the Series 2009C Bonds.*

*(4) Diageo debt service for 2010 & 2011 is paid from the Diageo capitalized interest fund.*

## CRUZAN

### General

Rum has been produced in the Virgin Islands for more than 300 years. All of the rum currently produced in the Virgin Islands is distilled by Cruzan VIRIL, Ltd. (formerly known as the V.I. Rum Industries Limited) (“Cruzan”), the rum production company located in St. Croix that currently generates all of the Matching Fund Revenues. Cruzan was founded in 1946 and has produced rum consistently since its inception. Cruzan is a wholly owned indirect subsidiary of Fortune Brands, Inc. (“Fortune Brands”). Fortune Brands is not obligated on the material contracts binding Cruzan.

Cruzan rum offers a wide range of dark and light rum as well as flavored varieties (“Cruzan Rum”). The varieties of rum produced was expanded in 2007 with the launch of Cruzan Black Cherry and Guava in 2008. Other extensions of the Cruzan Rum line are being evaluated by Beam Global Spirits & Wine, Inc., a subsidiary of Fortune Brands and an affiliate of Cruzan.

### The Cruzan Facility

The Cruzan facility (the “Cruzan Facility”) collectively consists of (i) a distillery (the “Cruzan Distillery”), (ii) a fermenter bottom and stillage cooling treatment facility (collectively, the “Cruzan Washwater Treatment Facility”) and (iii) separate barrel maturation warehouses (the “Cruzan Warehouses”) located on an approximately 33 acre parcel of land in Fredericksted, St. Croix (the “Cruzan Site”), owned and operated by Cruzan. Cruzan operates the Cruzan Distillery, the Cruzan Washwater Treatment Facility and the Cruzan Warehouses for the production and storage of bulk rum to be sold to third-parties and for use in Cruzan branded products and other branded rums. The Cruzan Facility includes all related utilities, transportation improvements and facilities necessary and appurtenant thereto.

### Description of the Cruzan Facilities

The Cruzan Facility consists of 12 principal buildings of approximately 110,000 square feet including the Cruzan Distillery, the Cruzan Washwater Treatment Facility and the Cruzan Warehouse located on the Cruzan Site.

The Cruzan Distillery has the capacity to produce 10.5 million proof gallons of rum per year at a production rate of 35,000 gallons per day on the basis of 300 to 310 days per year of operation. The Cruzan Site also houses an administrative office, a laboratory and work space and amenities for up to 58 employees. The Cruzan Distillery includes a molasses receiving area, a main distillery and ancillary operations.

The Cruzan Washwater Treatment Facility includes all equipment and systems employed for the treatment of the Cruzan Distillery effluents (wastewater).

The Cruzan Warehouses, which are at the Cruzan Site, currently store 43,000 barrels of rum.

### Management

The Cruzan Facility is managed by 3 on-site managers who have, in the aggregate, more than 78 years experience in the rum industry.

## **Utilities, Services and Materials**

The following provides details regarding water supply and disposal, other utilities, services and consumable materials needed to operate the Cruzan Facility.

Electricity. WAPA currently supplies electricity to the Cruzan Facility. The Cruzan Facility has backup generation capacity in the event of electric service interruption of WAPA at any time.

Steam Generation. Steam required for the distillation process will be generated on the Cruzan Site by steam boilers fired by Cruzan.

Fuel Oil. Cruzan buys its fuel directly from HOVENSA with delivery of such fuel by Bunkers, a locally owned and certified company that delivers fuel oil island wide.

Potable Water. Potable water required for the Cruzan Facility is supplied by wells.

Cooling Water. Cooling water, which cools the fermenters, vapors and product in the distillation process, is also supplied by wells. Cooling water that has passed through the heat exchangers will be routed to cooling towers and brought back to ambient temperature. The water will then be returned to the cooling system for re-use in cooling the Cruzan Distillery.

Stormwater Management. Warehouse roofs are routed to cisterns and used on site, both for process make-up water and to meet firefighting requirements.

Sanitary Sewer. Sanitary sewage generated at the Cruzan plant restroom is discharged through a connection to VIWMA sewer line located adjacent to the property. The sewer connection will be used only to dispose of sanitary sewage generated from these restrooms and sinks. All other bathroom facilities use septic systems on site. No washwater or process water will be discharged to the sanitary sewer.

Solid Waste. VIWMA provides for disposal of solid waste from the Cruzan Distillery to VIWMA facilities. The Cruzan Distillery and water treatment processes will generate approximately 24,000 lbs monthly, consisting mainly of yeast and molasses residual solids.

## **Permits**

The Territorial Pollutant Discharge Elimination System (“TPDES”) monitors discharges and enforces regulations controlling discharges of water from specific sites, including industrial, commercial and some residential sites that discharge into the waters of the Virgin Islands. Cruzan currently holds all necessary permits for the operation of the Cruzan Facility, including an occupancy permit, a solid waste disposal permit, a TPDES permit, which expires on February 28, 2013, and a terminal lease license. Note, however, notwithstanding the current TPDES permit, that certain discharges may require mitigation in order to satisfy the TPDES renewal requirement. (See “CRUZAN - Proposed Cruzan Agreement.”)

## **The Rum Production Process**

Molasses Receiving and Storage. Molasses is delivered via ship at the molasses port. It is stored in two molasses tanks with a capacity of 8,000 tons each. Molasses is scheduled through ED & F Man, a leading provider of molasses, logistics and risk management services, which works closely with Cruzan to coordinate Cruzan’s production schedules with the molasses producers. Molasses is trucked to the Cruzan Facility daily to additional storage tanks with a capacity of 200,000 gallons. The Cruzan Facility

has been running consistently since prohibition ended with no measurable interruptions caused by molasses shortages.

The molasses is pumped from the storage tanks to the main process site where it undergoes a dilution process and yeast is added. The molasses is then diluted with water down to an acceptable level for fermentation. A measured amount of nutrient salts is added to the molasses to ensure efficient fermentation. Yeast metabolizes the sugar contained in the molasses and generates the product of ethyl alcohol. Ethyl alcohol is the proper name for the vernacular 'alcohol' contained in alcoholic beverages. (See "THE RUM INDUSTRY - St. Croix Molasses Pier.")

Distillation. Once the fermentation process is complete the solution is sent to distillation, which separates and purifies ethanol from the fermenter product stream. The distillation process uses continuous columns to refine different qualities of rum that yield different tastes to the final bottled rum.

Cruzan Distillery Washwater Treatment System. The byproducts of the distillation process, are processed to remove fermenter bottoms and cooled to meet requirements set forth in Cruzan's TPDES permit. (See "CRUZAN - Proposed Cruzan Agreement.")

Rum Tanks, Barrel Filling and Maturation at the Cruzan Distillery. The rum distillate, at approximately 189 proof, is surged in a series of tanks, mixed with water and diluted to barreling proof. Product storage tanks are used to store rum before and after barrel filling. All tanks are installed outdoors on reinforced footings in a concrete slab area. Pumps allow rum to be transferred between product storage tanks and the barrel dumping and filling operations. This product is then pumped into railcars or tankers to be transported to Cruzan's bulk customers or to a Cruzan bottling facility. Rum requiring aging is barreled at the Cruzan Facility and stored onsite. Cruzan presently has 43,000 barrels in storage which is divided almost equally between palletized and racks. Rum is barreled based on future projections. Cruzan can currently barrel 300 barrels/day.

Shipping. Aged rum & bulk rum is pumped from Cruzan's storage tanks into international standards organization ("ISO") tanks most of which are provided by Tropical Shipping Co. M&T Trucking Company delivers these empty tanks weekly to Cruzan's plant and transports them once filled back to the port.

Tropical Shipping loads the tanks on their vessel which sails northbound weekly.

For most customers, there are 3 options for delivery:

- railcar shipments arrive at the port and are pumped into one large 30,000 wine gallon capacity railcar tank with a dome and seals. Then the rum is transported directly to the customer's plant.
- shipments via Oakley arrive at the port in ISO tanks and are pumped into Oakley tanks and taken to the final destination.
- shipments via Foodliner/Questliner arrive at the port in ISO tanks and are pumped into Foodliner tanks and taken to the final destination.

Tanks consigned to Florida Distillers Co. remain in ISO tanks and are trucked by Tropical to various Florida distillery facilities.

For each proof gallon of Virgin Islands produced rum exported to the United States mainland, importers pay \$13.50 per proof gallon in Federal Excise Taxes once bottled and sold to distributors.

In order to run a plant over 300 days per year it is important to have duplication in all important components. Cruzan has in most instances the ability to repair or maintain equipment, pumps, motors, boilers, etc., while in operation. Spare parts and rebuild kits are kept onsite for quick replacement and repair. Cruzan has the ability onsite to make repairs and continue operations. Most piping and storage for distillation, fermentation and rum tanks are made with 316 stainless steel.

As a result of Hurricane Omar (category 2 and 3) in 2008, Cruzan had to shut down operations for several days. As Cruzan has its own power generation ability onsite, it was able to re-start production within two and one half (2 ½) days. Cruzan has mobile generators for its wells which feed the plant and a generator on site capable of running the Cruzan Facility. Cruzan maintains higher inventories of molasses during the hurricane season to protect the tanks as well as maintaining supply. All loose materials are stored in warehouses, several of which are designed for wind loads exceeding 150 mph. All motors that are exposed are wrapped with tarps to reduce moisture and are heated with lamps and tested before started. In the event of a category 3 or weaker hurricane, it is anticipated that the Cruzan Facility would be operational within two weeks. Interruptions are programmed into the Cruzan Facility operation, which produces 10.5 million gallons per year assuming operation for 300-310 days per year.

### **Insurance Coverage During Operation**

Cruzan is responsible for maintaining insurance on the Cruzan Facility. Cruzan maintains commercially reasonable insurance against the risks of hurricane, earthquake, fire or other damage to the Cruzan Facility that might result in a commercially significant reduction in the output of rum that can be produced at the Cruzan Facility.

### **Ownership**

The ownership of Cruzan has changed six times during the past 25 years. Todhunter International, Inc. (“Todhunter”) acquired Cruzan in February of 1994. In 1999, Angostura Limited (“Angostura”), a Trinidad-based distiller, acquired more than 60% of Todhunter but sold its stake in Todhunter to V&S Vin and Sprit AB (“V&S”) in 2005. V&S acquired the remaining outstanding shares of Cruzan VIRIL Ltd. in 2006. In July 2008, Pernod Ricard, (“Pernod Ricard”), the second largest spirits company in the world, acquired V&S. On August 27, 2008, Pernod Ricard announced it planned to sell some of its assets to reduce its debt burden and streamline assets. On October 1, 2008, Pernod Ricard sold Cruzan to Fortune Brands, Inc., a leading consumer brands company with annual sales exceeding \$7 billion. Fortune Brands’ operating companies have premier brands and leading market positions in distilled spirits, home and hardware and golf products.

### **Current Subsidy and Support Payments**

The molasses subsidy from the Government to Cruzan and other rum producers, if any, which keeps the price of molasses at no more than \$0.16/gal., is required pursuant to Title 33, Chapter 111, Section 3036 of the Virgin Islands Code, subject to annual appropriation by the Virgin Islands Legislature. In the 35 years since the subsidy has been in effect there has not been a year when the Government failed to pay the subsidy.

In addition to the molasses subsidy, there is currently in place a marketing support agreement between Cruzan and the Government entered into on October 1, 2006, with a termination date of November 21, 2011 (the “Cruzan Marketing Support Agreement”), pursuant to which the Government

provides incentives to Cruzan for marketing rum in the United States. Since inception, the total paid to Cruzan pursuant to the Cruzan Marketing Support Agreement has aggregated \$6,529,650. Cruzan and the Government also entered a professional services contract on June 23, 2006 (the “Professional Services Contract”). Pursuant to the Professional Services, Contract the Government pays a portion of Cruzan’s costs to promote rum to bottlers and distribution companies. The Professional Services Contract has been extended annually with the current expiration date of December 31, 2009. The Professional Services Contract has aggregated \$7,069,000 since inception.

The following table shows the subsidy and support payments made by the Government to Cruzan in support of its rum production efforts over the past six years.

**Subsidy and Support Payments  
Calendar Years 2003-2008**

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Rum Promotion	\$1,358,68	\$2,246,601	\$1,982,402	\$2,412,691	\$2,200,000	\$2,204,000
Marketing Support	-	-	-	-	2,796,000	2,777,863
Molasses Subsidy	3,477,651	4,000,000	4,400,000	6,900,000	15,261,000 <sup>1</sup>	13,700,000 <sup>1</sup>
Total	4,836,335	6,246,601	6,382,402	9,312,691	20,257,000	18,681,863

<sup>1</sup> Indicates the appropriation amount of the Molasses Subsidy for the respective Fiscal Year, which are not the actual expenditures for Such Fiscal Years (See “THE RUM INDUSTRY – Molasses Subsidy Payments.”)

Source: United States Virgin Islands Office of Management and Budget.]

**Proposed Cruzan Agreement**

The Government and Cruzan are currently negotiating the terms of a thirty (30) year agreement pursuant to which it is expected that Cruzan will agree to construct the Cruzan Washwater Treatment Facility, expand the Cruzan Facility and continue its operations and increase the production of branded rum products on St. Croix, in return for certain economic development incentives from the Government, including: (i) grant financing to pay the costs of the Cruzan Washwater Treatment Facility and expansion of the existing Cruzan Distillery, (ii) reductions or elimination of certain taxes otherwise payable by Cruzan; and (iii) receipt of annual payments to pay (x) the costs of a molasses subsidy, (y) marketing efforts for Cruzan branded rum sales in United States markets; and (z) production incentives based on bulk rum and branded rum sales and the related increase in Matching Fund Revenues resulting therefrom (the “Cruzan Agreement”).

It is expected that the Government will provide grant financing through the Authority from the issuance of subordinated Matching Fund Revenue bonds, secured by surplus Matching Fund Revenues received by the Government from the production of rum at the Cruzan Facility, which financing will be used by Cruzan for capital investment in the Cruzan Washwater Treatment Facility, capital improvements and expansion of the Cruzan Facility. The Government and the Authority are expected to seek ratification of the proposed Cruzan Agreement from the Legislature and approval of the bonding authorization for the capital required to finance the Cruzan Washwater Treatment Facility and the improvement and expansion of the Cruzan Facility.

In return for such incentives, it is expected that Cruzan will commit to produce 100% of its rum products, either as a result of production in St. Croix or through production in St. Croix and shipping any such product on St. Croix as bulk rum to the United States for bottling and sale. It is also anticipated that Cruzan will immediately begin to increase its rum production.

Upon finalization of such negotiations, the Government and Cruzan will enter into the proposed Cruzan Agreement which will become effective upon ratification by the Legislature. The Legislature will simultaneously approve any bond authorization for the capital required for the Cruzan Wastewater Treatment Facility and the improvement and expansion of the Cruzan Facility. While Cruzan and the Government have substantially agreed to the terms of the proposed Cruzan Agreement, there can be no assurance that the Legislature will ratify any such agreement or authorize the issuance of bonds for the capital required for the Cruzan Wastewater Treatment Facility or the improvement and expansion of the Cruzan Facility. There can also be no assurance that if the Legislature does not ratify such agreement or authorize the issuance of bonds for the capital required for the Cruzan Wastewater Treatment Facility and the improvement and expansion of the Cruzan Facility, that Cruzan will continue to produce rum in the Virgin Islands in amounts sufficient to generate Matching Fund Revenues in amounts necessary to pay the principal and interest due and payable on the Series 2009 Bonds.

### **Environmental**

Cruzan has been notified by the U.S. Environmental Protection Agency (the “EPA”) that the discharge from its distillery operations may be harmful to certain marine life exposed thereto. Cruzan and the Government are currently working with the Virgin Islands Department of Planning and Natural Resources (“DPNR”) and the EPA to identify appropriate mitigation measures (“Environmental Mitigation Project”). Cruzan has submitted to the EPA and DPNR its proposed treatment options for its Environmental Mitigation Project that, once implemented, would result in the cessation of its effluent discharge into the ocean. Cruzan’s TPDES Permit, which expires on March 1, 2013, requires Cruzan to complete the design and engineering phase of the Environmental Mitigation Project by March 1, 2010, construction by December 1, 2011, and implementation by March 1, 2012. It is anticipated that the funding of the Environmental Mitigation Project shall be provided through the grant financing which is to be incorporated in the terms of the proposed Cruzan Agreement between the Government and Cruzan. (See “SECURITY AND SOURCE OF PAYMENT FOR THE SERIES 2009 BONDS” and “CRUZAN — Proposed Cruzan Agreement.”)

## DIAGEO

### General

In order to expand the rum industry in the Virgin Islands, the Government entered into the Diageo Agreement with Diageo USVI, providing various incentives to Diageo USVI (See “THE DIAGEO AGREEMENT”). Pursuant to the Diageo Agreement, Diageo USVI has agreed to develop rum production facilities on St. Croix, including a distillery, with the capacity to produce at least 18 million proof gallons of rum per year, together with related on site washwater treatment. (See (“THE DIAGEO PROJECT - Description of the Facilities.”). In addition, on a separate site, Diageo USVI will construct warehouse facilities having 200,000 square feet of barrel warehouse capacity (See “THE DIAGEO PROJECT – Description of the Facilities –*The Warehouses*.”). Set forth below is a description of Diageo, USVI as part of Diageo, plc, the Diageo Agreement and the Diageo Project, including construction timetable and proposed operation thereof.

### Diageo Group

Diageo plc (“Diageo plc”) and the entities that are controlled by or directly or indirectly owned in whole or in part by Diageo plc constitute the world’s leading premium drinks business with a broad collection of beverage alcohol brands across spirits, wine and beer categories. The Diageo plc related entities that are referenced below are collectively referred to herein as the “Diageo Group.” Members of the Diageo Group other than Diageo USVI are not legally or contractually obligated to support any of the obligations of Diageo USVI under the Diageo Agreement or otherwise except as described below under “- Diageo Holdings Comfort Letter.”

### Diageo USVI

Diageo USVI is a corporation duly organized and validly existing under the laws of the Virgin Islands. Diageo USVI is a direct, wholly-owned subsidiary of Selviac Nederland B.V. (“Selviac”). Selviac is an indirect, wholly-owned subsidiary of Diageo plc. Diageo USVI was formed in June 2008, for the purpose of owning and operating the Diageo Project.

### Diageo Holdings Netherlands B.V.

Diageo Holdings was acquired by UDV (SJ) Limited, a Diageo affiliate, on July 21, 1987. Its ultimate parent company is Diageo plc. Diageo Holdings’ net profit for year 2008 was \$314 million. As of June 30, 2008, Diageo Holdings had total assets of approximately \$34.4 billion, share capital of approximately \$7.6 million (at a rate of €1.58), share premium of approximately \$18.7 billion, retained earnings of approximately \$1.9 million and current liabilities of approximately \$13.8 billion.

### Diageo plc

Diageo plc is incorporated as a public limited company in England and Wales and its principal executive office is located in London. It is a major participant in the branded beverage alcohol industry and operates on an international scale, producing and/or distributing internationally known brands including Smirnoff vodka, Johnnie Walker scotch whiskey, Guinness stout, Baileys Irish Cream, J&B scotch whiskey, Jose Cuervo tequila, Tanqueray gin, Ketel One vodka, Crown Royal Canadian whiskey, Beaulieu Vineyards and Sterling Vineyards wines, Bushmills Irish whiskey as well as Myers and Captain Morgan rums.



## **Diageo Holdings Comfort Letter**

Pursuant to a Comfort Letter dated June 17, 2008, issued by Diageo Holdings (the “Comfort Letter”), Diageo Holdings acknowledged and consented to the Diageo Agreement and stated its intention to continue to support Diageo USVI for such time as any financial obligations or performance obligations may be owed by Diageo USVI under the Diageo Agreement. **While Diageo Holdings has provided the Comfort Letter with respect to the payment obligations of Diageo USVI, none of Diageo plc, Diageo Holdings nor any other corporate affiliate of Diageo plc, except Diageo USVI, is legally obligated to make any payments pursuant to the Comfort Letter, the Diageo Agreement or otherwise.**

## THE DIAGEO AGREEMENT

Pursuant to the Diageo Agreement, Diageo USVI agreed to build and operate on St. Croix a distillery (the “Diageo Distillery”) for production, and a warehouse (the “Diageo Warehouse”, and together with the Diageo Distillery, the “Diageo Facilities”) for the storage of bulk rum used in the production of Captain Morgan branded products in St. Croix (collectively, the “Diageo Project”) in return for certain economic development incentives from the Government, including: (i) a grant of up to \$250 million to pay the cost of the Diageo Project; (ii) reductions or elimination of certain taxes otherwise due from Diageo USVI including corporate income tax, taxes on all dividends and interest Diageo USVI otherwise may be required to pay, taxes on all real property or any interest in real property to the extent such property is used for the Diageo Project, gross receipts taxes, all excise or similar taxes on materials and equipment utilized in the Diageo Project, customs duties on raw materials and component parts imported into the Virgin Islands for use in developing and constructing the Diageo Project; and (iii) receipt of annual payments to pay the costs of (x) a molasses subsidy (the “Molasses Subsidy”), (y) marketing efforts for the Captain Morgan brand rum (the “Marketing Support”) and (z) production incentive payments in the event that Diageo Matching Fund Revenues in any Fiscal Year beginning in Fiscal Year 2012, exceed certain production thresholds, all of which are capped at a maximum percent of Diageo Matching Fund Revenues in any year (the “Production Incentive Payments”).

In exchange for such incentives, in addition to agreeing to develop the Diageo Project, Diageo USVI agreed (i) that on or about January 1, 2012, or earlier if so decided by Diageo USVI, all bulk rum used in the production of Captain Morgan branded products sold in the United States will be produced at the Diageo Distillery, (ii) to minimum rum production thresholds starting at 1.5 million proof gallons in Fiscal Year 2012, and (iii) to certain liquidated damages payable to the Government in the event there is a material default of Diageo USVI’s obligation to meet certain rum production thresholds within the timeframes set forth in the Diageo Agreement.

If Diageo USVI fails to produce bulk rum in the amounts specified in the Diageo Agreement and such breach is not cured within twelve months, the Government may terminate the Diageo Agreement, upon which termination Diageo USVI will be obligated to pay the Government liquidated damages in an amount determined pursuant to the Diageo Agreement, taking into account when the termination occurs and what interest rate is applied to such damages. **Pursuant to a Diageo Project Implementation Agreement, the Government has agreed that all such liquidated damages shall be applied to the redemption and/or defeasance of outstanding Subordinated Diageo Matching Fund Bonds and shall not be used for any other purpose so long as any Subordinated Diageo Matching Fund Bonds are outstanding. The Subordinated Diageo Matching Fund Bonds were issued on a subordinated basis to the Prior Senior Lien Bonds, the Prior Subordinate Lien Bonds, any additional Senior Lien Bonds, and any additional Subordinate Lien Bonds (including the Series 2009 Bonds) issued pursuant to the Indenture; therefore any payment of liquidated damages made in accordance with the Diageo Agreement will have no effect, either positive or negative, on the holders of the Series 2009 Bonds.**

If the Cover Over Rate is reduced below the level of \$10.50 per proof gallon or the economic development incentives provided by the Government to Diageo USVI are reduced or unavailable, Diageo USVI has the right to terminate the Diageo Agreement without the payment of liquidated damages. The Diageo Agreement expires 30 years from the later of (i) its effective date of July 10, 2008, the date that the Virgin Islands Legislature ratified the Diageo Agreement, or (ii) the date on which no Subordinated Diageo Matching Fund Bonds remain outstanding, but is subject to extension at the option of Diageo USVI for an additional 30-year term.

Currently, all rum used in Captain Morgan branded products sold in the U.S. is procured through an exclusive supply contract with a Puerto Rican third-party supplier, which expires on December 31, 2011. In accordance with the Diageo Agreement, upon completion of the Diageo Project, Diageo USVI will begin the production of rum that will be used to manufacture all Captain Morgan branded products sold in the U.S. in St. Croix beginning in January 2012. Puerto Rico also is eligible to receive and has received Matching Fund Revenues on rum produced by Diageo in Puerto Rico and elected and appointed officials in Puerto Rico have publicly objected to Diageo USVI entering into the Diageo Agreement. .

Diageo USVI expects to produce 13 million proof gallons of rum in Fiscal Year 2013 ( the first full fiscal year of production) and reach capacity of 18 million proof gallons in Fiscal Year 2027.

## **Legislation**

In April, Puerto Rico's Resident Commissioner to the U.S. House of Representatives introduced legislation, H.R. 2122, that would limit the amount of any subsidy paid from Matching Fund Revenues by either the Virgin Islands or by Puerto Rico to any private company to a maximum of ten percent (10%) of such revenues. The proposed legislation provides that, if the Secretary of the Treasury finds that either of the two governments has provided a subsidy greater than 10%, the amount in excess of 10% shall be paid over to the treasury of the government not providing the subsidy. The proposed legislation has seven co-sponsors and has been referred to the House Ways and Means Committee but no hearings have been scheduled and no further action has been taken on it. If the proposed legislation were in effect today, a portion of the benefits to be received by Diageo USVI from the Government under the Diageo Agreement would be inconsistent with the law. (See "BONDHOLDER RISKS –Proposed Legislation.")

## THE DIAGEO PROJECT

### General

The Diageo Project consists of the Diageo Distillery, a washwater treatment facility (the “Diageo Washwater Treatment Facility”) and separate barrel maturation warehouses (the “Diageo Warehouses”) to be constructed on two separate parcels of land in Christiansted, St. Croix and to be owned and operated by Diageo USVI. The Government has made a grant to Diageo USVI to finance substantially all of the costs of the design, construction and start-up of operations of the Diageo Distillery, the Diageo Washwater Treatment Facility and the Diageo Warehouses for the production and storage of rum. Diageo USVI expects to use the Diageo Distillery, the Diageo Washwater Treatment Facility and the Diageo Warehouses for the production and storage of bulk rum to be used in the Captain Morgan branded products exported by Diageo USVI to the United States. The Diageo Project also will include all related utilities, transportation improvements and facilities necessary and appurtenant thereto.

### Diageo Group’s Prior Experience in Developing and Operating Similar Facilities

The Diageo Group, either itself or through predecessor companies, has significant experience in both developing and operating facilities similar in nature to the facilities to be built on St. Croix as part of the Diageo Project.

The Diageo Group recently completed the construction of a new malt distillery in Scotland and is expanding its Cameronbridge, Scotland grain distillery. The Diageo Group owns and operates Gimli, a distillery located in Manitoba, Canada and also owns and operates the Bundaberg Distillery in Australia as well as breweries in Kilkenny, Dublin and Waterford, Ireland. The Diageo Group also owns and operates three spirit and beer production facilities in Kenya, Uganda and South Africa, and, through a joint venture, *La Primavera*, a distillery located in Atotonilco, Mexico, where it produces Don Julio Tequila. The Diageo Group, through a joint venture with National Rums of Jamaica Limited, a state owned company, owns the Clarendon Distillery in Monymusk, Jamaica.

### Description of the Diageo Facilities

#### *Diageo Distillery and Diageo Washwater Treatment Facility*

The Diageo Distillery and the Diageo Washwater Treatment Facility will be constructed on approximately 26 acres of land (the “Diageo Distillery Site”) at the St. Croix Renaissance Industrial Park (the “Park”), a 1200-acre industrial park owned by the St. Croix Renaissance Group LLP (“Renaissance”) located on the southern coast of St. Croix.

When fully operational at maximum capacity, the Diageo Distillery will have capacity to produce 20 million proof gallons of rum per year at a production rate of 80,000 liters per day on the basis of 200 to 250 days per year of operation. The Diageo Distillery Site also will house an administrative office, a laboratory and work space and amenities for up to 70 employees. Construction of the Diageo Distillery includes the development of two separate plots at the Diageo Distillery Site with a molasses receiving area, a main distillery and ancillary operations.

Construction of the Diageo Washwater Treatment Facility includes the development of a plot at the Diageo Distillery Site with all equipment and systems employed for the treatment of the Diageo Distillery effluents (washwater).

### *Diageo Distillery Site Lease Agreement*

Diageo USVI has executed a lease agreement with Renaissance to lease the Diageo Distillery Site. The lease agreement provides for a leasehold term of up to 60 years assuming the exercise of five optional 10-year extensions, which are at the sole discretion of Diageo USVI (provided that no monetary event of default (as described below) shall have occurred and be continuing). As used herein, the term of the lease agreement includes the initial term and any optional extensions exercised by Diageo USVI. These options allow Diageo USVI, at its sole discretion, to maintain possession of the Diageo Distillery Site throughout the 60-year period of the lease agreement.

If Diageo USVI extends the term for the full 60-year period, Diageo USVI may, at its sole discretion (provided that no monetary event of default shall have occurred and be continuing), further extend the term for an unlimited number of 10-year periods by giving prior written notice to Renaissance, not earlier than six months prior to the then scheduled expiration date of the current term, provided that the total term of the lease agreement may not extend beyond 200 years following the lease commencement date.

The annual base rent during the term under the lease agreement is calculated on a per acre basis and is increased every five years pursuant to an adjustment under the Consumer Price Index. During the term of the lease agreement, Diageo USVI shall, if applicable, also be responsible for additional charges, which include, without limitation, dockage and wharfage charges, container charges, Virgin Islands ship dues, washwater services charges and security service charges.

Diageo USVI also has the option to lease additional land adjacent to the Diageo Distillery Site should additional production capacity be needed in the future, provided that Renaissance and Diageo USVI mutually agree upon the location of a vacant parcel of real property at the Park. By locating the Diageo Distillery in the Park, the Diageo Project will benefit from existing infrastructure, including access to port and certain existing permits. The Park is zoned for heavy industry, which permits distillery use.

In addition to the right to use the premises pursuant to the lease agreement, Renaissance also has granted to Diageo USVI each of a non-exclusive (i) license to allow Diageo USVI's molasses ships to access the Kraus Channel and use the ship unloading station located at the Park, (ii) easement to use the entrance roadway to the Park, (iii) easement to use the access roadway, and (iv) easement to install, use and maintain pipe racks and to install pipe racks in a location at the Park mutually agreed upon by Renaissance and Diageo USVI, in each case for the term of the lease agreement; provided, however, the rights and responsibilities of the parties under the roadway easement, the access easement and the pipe rack easement shall be delineated in separate definitive easement agreements to be executed by the parties hereafter. Renaissance and Diageo USVI have agreed that all of these rights are inextricably bound together, so that such rights are intended to follow lease ownership. There is no assurance, however, that, if Renaissance transfers its interest in the premises to a third party, such third party will respect the license granted to Diageo USVI in clause (i) above; although the rights granted to Diageo USVI by means of the easements in clauses (ii) through (iv) should be binding on such third party upon execution of easement agreements and the recordation of a memorandum identifying such easement agreements.

If during the term of the lease agreement, all or any portion of the improvements constructed on the premises and/or the pipe and pipe racks constructed in the pipe easement area shall be destroyed or damaged in whole or in part by fire or other casualty of any kind or nature, Diageo USVI may at its discretion choose whether or not to repair, alter, restore, replace and/or rebuild such improvements constructed on the premises and/or pipes and pipe racks constructed in the pipe easement area.

If during the term of the lease agreement, the ship unloading station or any part thereof, or the entrance roadway or any part thereof, or the access roadway or any part thereof shall be damaged, destroyed by fire, or by any other peril, Renaissance shall be obligated to proceed to repair such damage; provided, however, Renaissance does not guarantee the availability of the ship unloading station throughout the term of the lease agreement and shall not be liable for any damages which Diageo USVI or any other party may suffer or incur arising out of the ship unloading station not being operational. If Renaissance fails to commence the repair of any such damage in connection with such casualty within thirty (30) days after such casualty, Diageo USVI will have the right to repair and receive reimbursement as provided for above with respect to maintenance. In the event that the ship unloading station cannot be repaired, or requires significant repairs, and is consequently unavailable, Diageo USVI will be required to (i) work with Renaissance to locate and utilize alternate ship unloading stations at the Park that could accommodate the pumping of Diageo USVI's molasses to the molasses tanks or (ii) utilize the Gordon Finch Molasses Pier on St. Croix (the "St. Croix Molasses Pier"), which is owned by the Government.

Events of Default under the lease agreement are categorized as either monetary events of default or non-monetary events of default. A monetary event of default solely consists of Diageo USVI's failure to pay base rent or any other monies. A monetary event of default results after base rent or any other monies are: (i) 10 days delinquent and Renaissance sends a first notice; (ii) if still delinquent 10 days after receipt of the first notice, Renaissance shall send a second notice; and (iii) if still delinquent 10 days after receipt of second notice, a monetary event of default shall have occurred; provided, however, Diageo USVI may cure such monetary event of default within 20 days after receipt of the second notice by paying the outstanding amount due plus 6 months base rent as additional security. Upon a monetary event of default, Renaissance may: (i) enter the premises, with or without legal proceedings, take possession of all goods, inventory, equipment, fixtures and other personal property, and sell the same at public or private sale; (ii) terminate the lease (after notice to Diageo USVI) and re-enter the premises with or without legal proceedings; and/or (iii) exercise any of Renaissance's other legal or equitable rights. A non-monetary event of default consists of any other failure under the lease agreement. Upon a non-monetary event of default, Renaissance's remedies include seeking damages or performing on behalf of Diageo USVI and demanding reimbursement. Renaissance, however, cannot terminate the lease agreement pursuant to a non-monetary event of default.

### *The Diageo Warehouses*

Diageo USVI plans to build two warehouses on 20.1 acres of land located at Plot 25 Estate Diamond, Prince Quarter (the "Diageo Warehouse Site"), located approximately four miles from the Diageo Distillery Site. On November 10, 2008, Diageo USVI entered into a sale and purchase agreement for the acquisition of the Diageo Warehouse Site. Following the completion of diligence review, Diageo USVI acquired the Diageo Warehouse Site in May 2009. The zoning of the Diageo Warehouse Site is designated as "C-Commercial", which allows for warehouse use. The facilities to be constructed on the Diageo Warehouse Site will provide at least 200,000 square feet of barrel warehousing capacity. The bulk rum produced in the Diageo Distillery will be warehoused in maturation barrels at the Diageo Warehouse Site. After maturation, the rum will be returned to the Diageo Distillery and transferred to isotankers or other vessels for shipment to the United States.

The Diageo Warehouses will be made of pre-fabricated steel, constructed and designed for wind and seismic conditions, meeting or exceeding the construction code for the Virgin Islands. Natural lighting and ventilation will in each case be utilized to minimize the need for utilities on the site. Emergency lighting and full fire suppression and sprinkler systems are included in the design. The Diageo Warehouse Site also will feature a small office/service building including amenities for employees working at the site. The Diageo Warehouse Site security and communications will be integrated with the Diageo Distillery Site and managed remotely.

## Construction Cost and Schedule

Diageo USVI estimates the cost of construction of the Diageo Project to be approximately \$184 million. The construction contracts for each of the Diageo Distillery, the Diageo Washwater Treatment Facility and the Diageo Warehouses were awarded in March 2009. The consulting and engineering contracts for the Diageo Distillery and the Diageo Washwater Treatment Facility were executed in May 2009, and the contract for the Diageo Warehouses was entered into in July 2009.

Construction under the Diageo Project is scheduled to be completed by November 2010, with the production of rum scheduled to commence at the same time. The first shipment of rum to the United States is expected to occur on or about January 1, 2012. Selviac plans to invest \$40 million for the Diageo Project working capital costs in 2009.

The table below outlines the current construction schedule for the Diageo Project.

	CY 09												C10						C11								
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	
Distillery & Washwater	Final Engineering																										
	Permits																										
	Site Work																										
	Building & Structural																										
	Equipment Installation																										
													Start-Up														
Warehousing	WHSE Permits																										
	WHSE Implementation																										

## Required Permits

Diageo USVI is required to obtain certain governmental permits and approvals in connection with the construction and operation of the Diageo Project. The table below lists the required material permits and approvals for the construction and the operation phases of the Diageo Project, the applicable governmental authorities issuing such permits, the status of the permits and, for permits that have not yet been obtained, the approximate time usually required for the issuance of each permit after an application for the permit has been submitted. Following the chart is a brief description of each of the required permits.

PERMITS	GOVERNMENTAL AUTHORITY	STATUS/TIMING
<b>DISTILLERY SITE</b>		
<b><u>PERMITS REQUIRED TO BEGIN CONSTRUCTION</u></b>		
CZM Major Land	DPNR	Notice of permit issuance received 04/08/2009. A request for modification was submitted 09/04/2009/ A response is expected within 30 days of submission.
Synthetic Minor Air Pollution	DPNR	Submitted 01/14/2009; ruled complete 05/05/2009; Additional information was requested. Diageo USVI expects to re-submit within 30 days; response expected within 30 days of submission.
TPDES Grading	DPNR	Submitted 03/05/2009; supplemental information submitted 06/05/2009.

PERMITS	GOVERNMENTAL AUTHORITY	STATUS/TIMING
TPDES Construction	DPNR	Approved 07/06/2009. Expected to be submitted 09/30/2009; Response expected within 30 days of submission
Revised TPDES Construction	DPNR	
<b><u>PERMITS REQUIRED TO BEGIN OPERATION</u></b>		
TPDES Industrial	DPNR	Submitted 03/05/2009; supplemental information submitted 06/05/2009. Response expected 30 days after TPDES Construction approval.
Terminal License Application	DPNR	Diageo USVI and SCRG are working with the U.S. Coast Guard to develop plans for pier improvements. Submission expected after pier improvements completed.
Construction and Alteration Approval	Federal Aviation Administration (“FAA”)	Submitted 03/09/2009; ruled complete 05/18/2009. Approved 07/03/2009
Archeology Phase I	DPNR/Virgin Islands State Historic Preservation office (“VISHPO”)	Completed and approved 02/19/2009.
Archeology Phase II	DPNR/VISHPO	Completed and approved 03/02/2009.
Archeology Phase III	DPNR/VISHPO	Field work completed as of 06/26/2009; management summary to be submitted to VISHPO 06/30/2009; final approval received 07/03/09.
Fire Protection	VI Fire Department (“VIFD”)	Submitted 12/2008 final approval expected after Diageo USVI submits final construction documents to VIFD.
Water Connection	WAPA	Preliminary approval received in 02/2009; final approval subject to receipt of final connection design, which Diageo USVI expects to submit four weeks after commencement of construction.
Sewer Connection	VIWMA	Submitted 01/02/2008; approval subjects to receipt of final construction documents, which Diageo USVI expects to submit four weeks after commencement of construction.
Solid Waste Approval	VIWMA	Approved 12/29/2008.
Special Waste Disposal Permit	VIWMA	To be submitted after the Distillery is built, during pilot testing.
Building Permit	DPNR	To be submitted in phases. First phase submitted 07/02/2009 and approved 08/05/09. Next phase submitted 08/03/2009. Additional phases to be submitted by end of September. All remaining permits to be submitted by the end of October 2009.



PERMITS	GOVERNMENTAL AUTHORITY	STATUS/TIMING
<b>WAREHOUSE SITE</b>		
<b><u>PERMITS REQUIRED TO BEGIN CONSTRUCTION</u></b>		
Land Clearing	DPNR	Approved 04/22/2009; land clearing now completed.
Earth Change Major Land	DPNR	Submitted 06/05/2009. Approved 07/30/2009.
<b><u>PERMITS REQUIRED TO BEGIN OPERATION</u></b>		
Insignificant Air Pollution	DPNR	Application complete and under review by DPNR.
Archeology Phase I	DPNR/VISHPO	Completed and finding of no affect approved 02/09/2009.
Fire Protection	VIFD	Submission for approval will be during the first quarter of 2010. The Fire Marshall has given consent as a requirement of the building permit issued 08/07/2009 (as defined herein); response expected 30-45 days from submission.
Water Connection	WAPA	Submission for approval will be during the first quarter of 2010; response expected 30-45 days from submission.
Sewer Connection	VIWMA	Submission for approval will be during the first quarter of 2010; response expected 30-45 days from submission.
Building Permit	DPNR	Application Approved and Permit No. 389-09 issued on September 2, 2009.

### *CZM Permit*

A CZM permit is required for all developmental activity in what is classified as the “first tier” of the coastal zone of the Virgin Islands. The Diageo Distillery is located in the first tier of the coastal zone, the Diageo Warehouses are not. Diageo USVI submitted the CZM permit application on January 9, 2008. On April 8, 2009, the CZM committee of the DPNR determined to grant the CZM permit to Diageo USVI. The CZM permit was received and on September 4, 2009, a request for modification was submitted to reflect minor changes made to the Diageo Facility (the “Request for Modifications”).

### *Synthetic Minor Air Pollution*

The DPNR is responsible for regulatory oversight to implement and enforce air pollution and air quality requirements in the Virgin Islands. All of St. Croix is designated Class II by the EPA in compliance with the National Ambient Air Quality Standards. According to the Virgin Islands rules and regulations, the following air pollutants are regulated in Class II air quality regions: open burning, visible air contaminants, particulate matter emissions, volatile petroleum products, sulfur compounds and internal combustion engine exhaust. The Diageo Distillery will be located in an industrial area that contains multiple major sources of emissions, including the Anguilla Landfill, Renaissance and HOVENSA. Since emissions from the Diageo Distillery of each of the criteria pollutants will be less than 100 tons per year and the aggregate emissions of hazardous air pollutants will be less than 10 tons per year, the Diageo Distillery falls into the category of “minor source” as defined by DPNR; therefore, DPNR issued the

CZM permit for the Diageo Distillery Site without requiring Title V or Prevention of Significant Deterioration of Air Quality (“PSD”) review.

Alcohol vapor escapes from wooden barrels during the aging process of spirits. Most jurisdictions in the U.S. consider these emissions to be fugitive emissions for which there is no Reasonably Applicable Control Technology. DPNR has agreed that emissions from the aging process are fugitive, meaning that a PSD or Title V construction permit will not be required for the construction of the Diageo Warehouses.

#### *TPDES*

Diageo USVI submitted to DPNR applications for two separate TPDES permits for the Diageo Project. The first is for the discharge of stormwater during construction of the Diageo Distillery. The second is for discharge of stormwater during operation of the Diageo Distillery. During both construction and operation excess stormwater will be received by the existing gut at the Park. This gut currently directs runoff to a cooling pond also at the Park. The final receiving water is Krause Channel and the Caribbean Sea. Diageo USVI submitted applications for both of these permits to DPNR on March 5, 2009, and additional information requested by DPNR on June 5, 2009. The Grading and Clearing TPDES permit was issued on April 8, 2009. The TPDES construction permit was approved on July 6, 2009. A revised application is being prepared to follow the changes in the Request for Modification submitted on September 4, 2009. A third application for site grading for building construction will be submitted once building design plans are completed.

#### *Terminal License Application*

The DPNR requires a Terminal Facility License be obtained by anyone seeking to operate any vessel that results in the discharge of oil, petroleum products or their by-products, and other pollutants into or upon any coastal waters adjoining the seacoast of the Virgin Islands. As currently configured, the Diageo Project will require a Terminal Facility License for the shipment of both fuel and molasses to the Diageo Distillery Site. Diageo USVI is awaiting finalization of its design plans as they relate to the intake of fuel and molasses into the Diageo Distillery Site before submitting its Terminal Facility License applications to DPNR.

#### *FAA Construction and Alteration Approval*

The FAA requires the filing of notice 30 days in advance of construction or alteration on projects affecting navigable airspace. Diageo USVI submitted a preliminary notice of the project to the FAA, which determined the application to be complete on April 21, 2009. The FAA granted approval on July 3, 2009.

#### *VISHPO-Archeology Phases*

The VISHPO is responsible for surveying and inventorying historic places and sites, reviewing and ensuring compliance with federal and territorial preservation laws, historic preservation planning, securing of technical assistance, implementing of public education and identifying of cultural resources. Phase I archeological surveys were conducted at both the Diageo Distillery Site and the Diageo Warehouse Site. The survey at the Diageo Warehouse Site resulted in a finding of no historical resources. The survey at the Diageo Distillery Site revealed the presence of historical resources. The Phase II archeological data recovery phase was completed and approved on March 2, 2009. Phase III was completed July 3, 2009. In the event that further action is required in connection with the preservation of the historical resources found at the site, this may result in a delay to completion of the Diageo Distillery

and commencement of the production of rum. (See “BONDHOLDER RISKS”—“Historical and Archeological Resources.”)

#### *Fire Protection*

In December 2008, Diageo USVI submitted to the Virgin Island Fire Department the basic design for fire protection at the Diageo Distillery Site. VIFD has orally communicated to Diageo USVI that it has no objection to the basic design that Diageo USVI submitted. Upon receipt of the final construction documents, the VIFD will issue final approval. Diageo USVI expects to submit the final construction documents to VIFD eight weeks after commencement of construction.

Diageo USVI has not yet submitted the basic design for fire protection at the Diageo Warehouse Site. Diageo USVI expects to submit these following completion of the design plans for the Diageo Warehouses.

#### *Water Connection*

Diageo USVI currently has a preliminary approval and a commitment from WAPA that WAPA will provide water to each of the Diageo Distillery Site and the Diageo Warehouse Site, but the final approval is subject to the design approval of the connection itself. Diageo USVI expects to submit connection designs for each of the Diageo Distillery and the Diageo Warehouses to WAPA four weeks after commencement of construction.

#### *Sewer Connection*

In December 2008, Diageo USVI submitted to the VIWMA the basic design for sanitary sewer connection at the Diageo Distillery Site. Upon receipt of the final construction documents, the VIWMA will issue the final approval. Diageo USVI expects to submit the final construction documents to the VIWMA four weeks after commencement of construction.

Diageo USVI has not yet submitted the basic design for sewer connection at the Diageo Warehouse Site. Diageo USVI expects to submit these following completion of the design plans for the Diageo Warehouses.

#### *Building Permit*

Obtaining the CZM permit and the TPDES permit are conditions to applying for the building permit from the DPNR. In addition, DPNR must receive full construction documents before issuing the building permit. Diageo USVI expects to submit final construction documents to the DPNR after commencement of site work at both the Diageo Distillery Site and the Diageo Warehouse Site.

#### *Land Clearing Permit for Diageo Warehouse Site*

A Land Clearing Permit is required to clear brush, shrubs and other low lying vegetation on the Diageo Warehouse Site was received on April 22, 2009. The Diageo Warehouse Site has now been cleared for survey. The CZM permit allows for similar land clearing at the Diageo Distillery Site.

#### *Earth Change Major Land Permit for Diageo Warehouse Site*

An Earth Change Major Land Permit application was submitted on or June 5, 2009, to authorize contouring of the land to accommodate the design for the Diageo Warehouses and approval was received

on July 30, 2009. The CZM permit authorizes similar changes to the landscape at the Diageo Distillery Site.

## **Consulting/Engineering Contracts**

### *Engineering and Project Management*

Diageo USVI engaged the Dennis Group, LLC (the “Dennis Group”) to assist with the early planning of the construction of the Diageo Project. With the assistance of the Dennis Group, Diageo USVI issued turnkey bids for the engineering and construction of the Diageo Distillery and the engineering and construction of the Diageo Warehouses pursuant to two separate requests for quotations. For more information regarding the Dennis Group, see [www.dennisgrp.com](http://www.dennisgrp.com). Diageo USVI, the Authority and the Underwriters make no representation about the accuracy of the information found on the Dennis Group’s website.

### *Owner’s Engineer*

Diageo USVI has engaged the U.S. affiliate of the Project Management Limited (“PM Group”) to serve as the owner’s engineer (the “Owner’s Engineer”) and provide professional engineering and project management services to ensure the Diageo Project is delivered to the agreed scope, on-time and within budget. The PM Group is a private company limited by shares, registered in Ireland. The PM Group is an indirect subsidiary of Project Management Holdings Limited t/a PM Group, a private company limited by shares, registered in Ireland.

The PM Group will perform the following activities on behalf of Diageo USVI: (a) review construction contracts, change order requests, requests for substitutions, requisitions for payment and shop drawings/submittals; (b) assist in obtaining permits; (c) assist in tracking all regulatory and licensing plans; (d) assist in procurement activities; (d) conduct on-site inspections for quality control, assurance of reliability goals, adherence to risk management plans and adherence to environmental management plans; (e) attend and/or participate in plan reviews and schedule reviews; (f) perform vendor inspections and audits, review and/or monitor submissions of job close-out documents, implementation of personnel training; (g) provide financial auditing; (h) provide project reporting and value analysis; (i) perform cash flow management and cost tracking; (j) facilitate a full-time presence as Diageo USVI’s representative on site; and (k) assist in warranty issue negotiations.

### *Environmental Engineering*

Diageo USVI has engaged the Maguire Group Inc. (“Maguire Group”) to provide Diageo USVI with environmental consulting as well as permit consulting and preparation. The Maguire Group has substantial experience in all phases of civil engineering and environmental projects. The Maguire Group is headquartered in Foxborough, Massachusetts and has 12 offices throughout the northeast United States and the Virgin Islands. It was founded in 1938 and currently employs approximately 200 administrative and technical personnel, who have substantial experience rendering environmental compliance services in the Virgin Islands, including in connection with the location of the proposed Diageo Project facilities on St. Croix.

The Maguire Group has been retained to prepare all of the permitting documentation required to be submitted by Diageo USVI throughout the course of the Diageo Project. For more information regarding the Maguire Group Inc., see [www.maguiregroup.com](http://www.maguiregroup.com). Diageo USVI, the Authority and the Underwriters make no representation about the accuracy of the information found on the Maguire Group’s website.

## Construction Contracts

### *Diageo Distillery Construction Contract*

In May, 2009, Diageo USVI entered into engineering, procurement and construction agreements with Tomsa Destil, S.L. and its affiliates (collectively, “Tomsa”) for the design, the procurement of equipment for and the construction, on a fixed-price lump sum basis, of the Diageo Distillery on the Diageo Distillery Site (the “Tomsa Agreements”). Tomsa has designed and installed equipment on five continents, using all types of raw materials, to produce a variety of alcohol. For more information regarding Tomsa, see [www.tomsa.es](http://www.tomsa.es). Diageo USVI, the Authority and the Underwriters make no representation about the accuracy of the information found on the Tomsa’s website.

Pursuant to the Tomsa Agreements, Tomsa is obligated to perform all work related to the Diageo Distillery and interconnection between the Diageo Distillery and the Diageo Washwater Treatment Facility, including the following: (i) all site and building engineering work, including civil, structural, architectural, mechanical, and electrical disciplines for all of the site improvements and structures required for the Diageo Distillery and interconnection work; (ii) securing all requisite subcontracts for the construction of the Diageo Distillery and carrying out applicable Diageo Distillery permitting activities; (iii) all site and building construction, including site clearing, provision of site utilities and provision of site improvements, such as footings and foundations, structural steel, concrete slabs, roofing and siding, plumbing, heat, ventilation and air conditioning (“HVAC”), refrigeration and fire protection, building power, lighting, grounding and site-related systems; (iv) all management, procurement, labor, materials, tools, supervision and commissioning services for the efficient implementation and completion of the work; (v) protecting the buildings, drainage systems and ancillary site structures during the construction period and remedying, at its own expense to the satisfaction of the PM Group, any damage caused by negligence or failure to provide adequate protection both to the Diageo Distillery and to its product; and (vi) the safety and insurance of equipment, materials, scaffolding, and any other items required for the completion of the work (the “Tomsa Work”).

Tomsa also will procure all equipment and materials required for the Tomsa Work and be responsible for all costs associated with expediting, insurance, transportation, export and import of such equipment. All additions and modifications to the Tomsa Work will be executed via a formal change order. Pursuant to the Tomsa Agreements, Tomsa is required to certify that the Diageo Distillery can be operated effectively at 12.8 million (64% of design rate), 16 million (80%) and 20 million proof gallons per year (100%) in order for substantial completion to be achieved.

The aggregate fixed contract price for the Tomsa Work is \$36,680,000 for the construction work and €40,440,000 for the cost of the related engineering and procurement work (the “Tomsa Contract Price”). With respect to the portion of the Tomsa Contract Price that is to be paid in Euros, Diageo USVI has entered into currency hedging arrangements limiting its exposure to \$55,600,000. The Tomsa Contract Price constitutes the fixed limit of the engineering, procurement and construction cost available for the Tomsa Work and assumes there will be no material changes in Tomsa’s obligations.

Should Tomsa fail to make the Diageo Distillery ready for continuous operation and commissioning, and otherwise achieve all of the requirements of mechanical completion under the Tomsa Agreements, by August 30, 2010 (the “Scheduled Mechanical Completion Date”) as such date may be adjusted under the terms of the Tomsa Agreements, Diageo USVI may be entitled to retain or recover from Tomsa as liquidated damages \$30,000 for each day mechanical completion is delayed beyond the Scheduled Mechanical Completion Date (the “Delay Liquidated Damages”). The maximum amount of the Delay Liquidated Damages to be paid by Tomsa will not exceed in the aggregate 10% of the Tomsa Contract Price. In the event the performance tests for the Diageo Washwater Treatment Facility are not

successfully completed due to Tomsa's failure to meet the performance specifications set forth in the Tomsa Agreements, Tomsa shall pay, as "Process Liquidated Damages", amounts not to exceed in the aggregate 5% of the Tomsa Contract Price.

Diageo USVI will retain a portion of each payment to Tomsa under the payment applications issued to Diageo USVI pursuant to the Tomsa Agreements ("Retainage"). Retainage shall equal 10% in the aggregate of all payments to Tomsa and shall be retained by Diageo USVI until October 2010, at which point Diageo USVI shall release to Tomsa any Retainage relating to the satisfactorily-completed Tomsa Work sufficient to reduce the Retainage to an amount equal to 125% of the reasonable value of all remaining Tomsa Work. In lieu of Retainage withholdings by Diageo USVI, Tomsa may at its option provide a letter of credit or similar instrument in a form acceptable to Diageo USVI in an amount equal to 10% of the Tomsa Contract Price outstanding from time to time.

Diageo USVI may withhold or nullify the whole or part of any payment, including the final payment, and withhold Retainage, to such extent as may be necessary to reasonably protect Diageo USVI from any of the following: (a) defective or nonconforming work; or (b) third-party claims, or liens, asserted or filed; (c) reasonable evidence that the Tomsa Work will not be completed for the unpaid balance of the Tomsa Contract Price; or (d) failure by Tomsa to make payments properly to subcontractors or for equipment, materials or labor, for a period of at least thirty (30) days; or (e) damage caused to Diageo USVI or a separate contractor under Diageo USVI's responsibility (such as the contractor for the Diageo Washwater Treatment Facility) caused by Tomsa or a subcontractor; or (f) failure of Tomsa to prosecute the Tomsa Work in accordance with the Tomsa Agreement.

Tomsa is required to secure its contract obligations by furnishing, delivering and maintaining either (i) a payment and performance bond, at Diageo USVI's cost, in a form satisfactory to Diageo USVI, or (ii) payment and performance bonds furnished by Tomsa's major construction subcontractors, in forms satisfactory to Diageo USVI, covering the full and faithful performance and completion of the construction work and the payment of all Tomsa's payment obligations related to such contracts in the amount equal to the aggregate contract price for the construction work (\$36,680,000), valid for the period extending until substantial completion (scheduled to occur in November, 2010), provided that a warranty bond for ten percent (10%) of the aggregate amount of the Tomsa Contract Price, as Tomsa's security for its warranty obligations through the applicable warranty period shall be issued at substantial completion. All such bonds will name Diageo USVI as a direct beneficiary.

To further secure its contract obligations, Tomsa must, from time to time throughout the term of the Tomsa Agreements, furnish, deliver and maintain a letter of credit, bank guaranty or similar instrument in a form satisfactory to Diageo USVI, covering (a) the full and faithful performance and completion of the engineering and procurement work for the period through the achievement by Tomsa of the next milestone on the schedule of values for which Tomsa expects to be paid upon approval by Diageo USVI, and (b) the payment of all of Tomsa's payment obligations through such period, provided such instruments must be in an amount equal to the corresponding value of such work as delineated in the schedule of values for such period, and must be valid for a period extending until ten (10) days following the Diageo USVI's approval of the work covered by the applicable payment milestone. All such security instruments must name Diageo USVI as direct beneficiary.

In addition, Tomsa has provided a parent guaranty, issued by Tomsa Destil, S.L., covering the full and faithful performance and completion of all work to be performed under the Tomsa Agreements by Tomsa affiliates.

Events of default under the Tomsa Agreement include: Tomsa's (i) failure to provide a sufficient number of skilled workers; (ii) failure to supply the materials required by the contract documents; (iii)

failure to comply with applicable legal requirements; (iv) failure to timely pay, without cause, subcontractors, or materials or labor used in the Tomsa Work, (v) failure to provide the required bonds or any other contractor security; (vi) failure to maintain insurance required by the contract documents; (vii) failure to prosecute the Tomsa Work in accordance with the contract times within 60 days of each contract time; (viii) assigning its obligations under the contract documents without the consent of Diageo USVI; (ix) becoming subject to a voluntary or involuntary filing of bankruptcy or insolvency proceeding in any jurisdiction; or (x) failure to perform other material obligations under the contract documents. The Tomsa Agreements establishes curing provisions for several of these events of default.

#### *Diageo Wastewater Treatment Facility Construction Contract*

In May 2009, Diageo USVI entered into engineering, procurement and construction agreements with NAWS Caribbean, LLC, a United States Virgin Islands subsidiary of Veolia Water Solutions & Technologies, and with its affiliates (collectively, “Veolia”), for the design, the procurement of equipment for and the construction, on a fixed-price lump sum basis, of the Diageo Wastewater Treatment Facility on the Diageo Distillery Site (the “Veolia Agreements”). For more information regarding Veolia, see [www.veoliawaterst.com](http://www.veoliawaterst.com). Diageo USVI, the Authority and the Underwriters make no representation about the accuracy of the information found on Veolia’s website.

Pursuant to the Veolia Agreements, Veolia is obligated to perform all work relating to the Diageo Wastewater Treatment Facility, including the following: (i) all site and building engineering work, including civil, structural, architectural, mechanical, and electrical disciplines for all of the site improvements and structures required for the Diageo Wastewater Treatment Facility; (ii) securing all requisite subcontracts for the construction of the Diageo Wastewater Treatment Facility and carrying out applicable permitting and procurement activities required for the work relating to the Diageo Wastewater Treatment Facility; (iii) all site and building construction, including, site clearing, provision of site utilities and provision of site improvements, such as footings and foundations, structural steel, concrete slabs, roofing and siding, plumbing, heat, ventilation and air conditioning (“HVAC”), refrigeration and fire protection, building power, lighting, grounding and site-related systems; (iv) all management, procurement, labor, materials, tools, supervision and commissioning services for the efficient implementation and completion of the work; (v) protecting the buildings, drainage systems and ancillary site structures during the construction period and remedying, at its own expense to the satisfaction of the PM Group, any damage caused by negligence or failure to provide adequate protection both to the Diageo Wastewater Treatment Facility and to its product; and (vi) the safety and insurance of equipment, materials, scaffolding, and any other items required for the completion of the work. (the “Veolia Work”). All additions and modifications to the Veolia Work will be executed through a formal change order.

The aggregate fixed contract price of the Veolia Work is \$26,446,875 (the “Veolia Contract Price”). The Veolia Contract Price constitutes the fixed limit of the engineering, procurement and construction cost available for the Veolia Work and assumes there will be no material changes in Veolia’s obligations.

Should Veolia fail to have the Diageo Wastewater Treatment Facility ready for continuous operation and commissioning, and otherwise achieve all of the requirements of mechanical completion under the Veolia Agreements, by July 22, 2010 (the “Scheduled Mechanical Completion Date”), Diageo USVI may be entitled to retain or recover from Veolia as liquidated damages, for each day (each such day, a “Day of Delay”) after the fifteenth (15th) day beyond the Scheduled Mechanical Completion Date, \$10,000 for each Day of Delay, up to the first thirty (30) Days of Delay, and \$20,000 for each Day of Delay thereafter (the “Delay Liquidated Damages”). The maximum amount of the Delay Liquidated Damages to be paid by Veolia will not exceed in the aggregate 10% of the Veolia Contract Price. In the event the performance tests for the Diageo Wastewater Treatment Facility are not successfully completed

due to Veolia's lack of conformance with the performance specifications set forth in the Veolia Agreements, Veolia shall pay, as "Process Liquidated Damages" amounts not to exceed in the aggregate 5% of the Veolia Contract Price.

Diageo USVI will retain 10% of the amount due to Veolia under each payment application issued to Diageo USVI pursuant to the Veolia Agreements ("Retainage") through mechanical completion, at which point Diageo USVI shall release to Veolia any retained amounts relating to the Veolia Work or completed portion of the Veolia Work sufficient to reduce retention to an amount equal to 150% of the reasonable value of all punch list items remaining until final completion of the Veolia Work. In lieu of Retainage withholdings by Diageo USVI, Veolia may at its option provide a letter of credit in an amount equal to 10% of the Veolia Contract Price outstanding from time to time.

Diageo USVI may withhold or nullify the whole or part of any payment, including final payment, and withhold Retainage, to such extent as may be necessary to reasonably protect Diageo USVI from any of the following: (a) defective or nonconforming work; or (b) third-party claims, or liens, asserted or filed; or (c) reasonable doubt that the Veolia Work will be completed for the unpaid balance of the Contract Price; or (d) failure by Veolia to make payments properly to subcontractors or for equipment, materials or labor; or (e) damage caused to Diageo USVI or a separate contractor under Diageo USVI's responsibility caused by Veolia or a subcontractor; or (f) failure of Veolia to prosecute the Veolia Work in accordance with the contract documents.

Veolia must furnish, deliver and maintain payment and performance bonds, in forms satisfactory to Diageo USVI in its sole discretion, covering the full and faithful performance and completion of the Veolia Agreements and the payment of all Veolia's payment obligations thereunder in an amount equal to the Veolia Contract Price, valid for the period extending until mechanical completion, provided that a warranty bond for ten percent (10%) of the aggregate amount of the Veolia Contract Price, as Veolia's security for its warranty obligations through the applicable warranty period shall be issued at mechanical completion. Such bonds will name Diageo USVI as a direct beneficiary.

In addition, Veolia has provided a parent guaranty, issued by N.A. Water Systems, LLC, covering the full and faithful performance and completion of all construction work to be performed by its subsidiary, N.AWS Caribbean, LLC., under the Veolia Agreements.

Events of default under the Veolia Agreement include Veolia's (i) failure to provide a sufficient number of skilled workers; (ii) failure to supply the materials required by the contract documents; (iii) failure to comply with applicable legal requirements; (iv) failure to timely pay, without cause, subcontractors or for materials or labor used in the Veolia Work and failure to provide the required bonds or any other required contractor security; (v) failure to maintain insurance required by the contract documents; (vi) failure to prosecute the Veolia Work in accordance with the contract times within 60 days of each contract time; (vii) assigning its obligations under the contract documents without the consent of Diageo USVI; (viii) becoming subject to a voluntary or involuntary filing of bankruptcy or insolvency proceeding in any jurisdiction; or (ix) failure to perform other material obligations under the contract documents. The Veolia Agreement establishes curing provisions for several of these events of default.

#### *Insurance Coverage during Construction*

Each of the Tomsa Agreements and the Veolia Agreements imposes standard insurance requirements on Tomsa and Veolia, respectively, to maintain liability and other types of insurance generally required for construction projects of the size and scope similar to the Diageo Project. As a part of such requirements, Veolia is required to maintain a \$50 million umbrella liability policy covering its work and Tomsa is required to maintain a \$30 million umbrella liability policy covering its work.



Additional insurance coverage requirements include workers compensation, employers liability, professional liability, builders risk and pollution liability policies which are standard and customary for projects of this type.

#### *Interconnection Coordination and Cooperation Agreement*

In June 2009, Diageo USVI and PM Group entered into an agreement with Veolia and Tomsa for the coordination and general cooperation amongst the contractors, Diageo USVI and PM Group relating to the interconnect between the Diageo Distillery and Diageo Washwater Treatment Facility (the “Cooperation Agreement”). While the responsibilities of each party relating to the interconnect are specifically delineated in the scopes of work in Tomsa’s and Veolia’s respective agreements with Diageo USVI, under the Cooperation Agreement, Tomsa and Veolia agree to use best efforts to coordinate and cooperate with each other and Diageo USVI with respect to the interconnection work.

#### *Barrel Maturation Construction Contract*

In July 2009, Diageo USVI entered into a contract with J. Benton Construction, LLC (“Benton”) for the turn-key design, engineering, procurement and construction of the barrel warehouse facilities on the Diageo Warehouse Site (the “Benton Agreement”). For more information regarding J. Benton Construction, LLC, see [www.bentonconstruction.com](http://www.bentonconstruction.com). Diageo USVI, the Authority and the Underwriters make no representation about the accuracy of the information found on J. Benton Construction, LLC’s website.

Under the Benton Agreement, Benton will be obligated to perform all Diageo Warehouse Site work, including demolition, site preparation, earthwork, soil stabilization, paving and site improvements, storm drainage accommodation (including handling storm drain inlet structures and catch basins, storm drain piping and rainwater collection and reuse systems), site utilities provision and landscaping (the “Benton Work”). All additions and modifications to the scope of Benton Work will be executed via a formal change order.

#### **Facilities’ Managers**

Each of Diageo North America, Inc., Diageo Supply Americas, Inc. (“Diageo Supply”) and Diageo Canada, Inc. has entered into an agreement with Diageo USVI to provide management services in the construction and start-up phase of the Diageo Project.

Oversight of the construction and operation of the Diageo Distillery and the Diageo Warehouses will be managed internally by Daniel Kirby, the Vice President of Diageo USVI with support from Robert Irby, the Strategic Project Director at Diageo Supply. The engineering work will be managed internally by Brian Hunnius, the Director of Engineering at Diageo Supply. Mr. Hunnius will be supported by the PM Group. Each of these individuals has a number of years of experience in project management, engineering and operations in the alcohol beverage industry. (See “THE DIAGEO PROJECT – Diageo Service Agreement.”)

#### **Utilities, Services and Materials**

The following provides details regarding water supply and disposal, other utilities, services and consumable materials needed to operate the Diageo Project. (See “THE DIAGEO PROJECT – Required Permits.”)

Electricity. WAPA has agreed to supply electricity to the Diageo Project. Renaissance also has made a proposal to Diageo USVI to supply electricity as part of a utilities supply agreement. Diageo USVI is evaluating what option may better fit the needs of the Diageo Distillery Site. If Diageo USVI opts to purchase electricity from WAPA, Diageo USVI will interconnect with WAPA's transmission and distribution system at one of the two connection points presently available on the Diageo Distillery Site. It is anticipated that WAPA will supply electricity to the Diageo Warehouse Site.

Steam Generation. Steam required for the distillation process will be generated on the Diageo Distillery Site by steam boilers fired by a combination of number 6 fuel oil and bio-gas. The bio-gas used in the steam boilers will be generated on site by the digestion of spent molasses liquor remaining from the distillation process. Fuel oil will initially be used to fire the boilers until the digestion process begins bio-gas conversion. It is estimated that bio-gas will meet about 60 percent of the fuel needs for the boiler with fuel oil making up the other 40 percent.

Fuel Oil. Diageo USVI has an agreement with GeoNet Ethanol LLC ("GeoNet") to provide fuel oil to the Diageo Distillery Site from GeoNet's storage tanks via tank truck. Under the Diageo Project's current configuration, GeoNet will transport fuel oil to the Diageo Distillery Site by truck. GeoNet presently holds a terminal license to transport oil to and store oil at the port. GeoNet receives oil shipments approximately once a month. A second monthly shipment would be needed to provide the additional fuel oil required by the Diageo Distillery. GeoNet has filed an application to amend its terminal license to accommodate this increased shipping and storage of oil. Diageo USVI also is in discussions with HOVENSA, as an alternative, for the direct shipment of fuel oil, which could eliminate double-handling of the fuel oil, reducing costs as well as risk.

Diageo USVI is expected to enter into a supply agreement with HOVENSA under which HOVENSA will provide diesel fuel to the Diageo Distillery Site. Diesel will be used to operate certain equipment as well as for reserves in the event that number 6 fuel oil is not available when needed to operate the steam boilers.

Potable Water. Potable water required for the Diageo Project will be supplied by WAPA and/or Renaissance. The potable water line for the Diageo Project will connect the Diageo Distillery Site to both the WAPA and the Renaissance water systems. Therefore, Diageo USVI will have the capability of purchasing water for the Diageo Distillery Site from either party. It is anticipated that WAPA also will provide potable water to the Diageo Warehouse Site.

Cooling Water. Recycled fresh water will be used to condense the alcohol from the distillation process. The Diageo Distillery will use approximately two million gallons of water daily for this purpose. Under the current facility design, recycled water will be drawn for cooling water purposes from the Anguilla water treatment facility operated by the VIWMA. VIWMA will construct a recycled water pipeline from Anguilla to the Diageo Distillery and VIWMA and Diageo USVI will maintain the pumping capacity needed to provide cooling water to the heat exchangers for the Diageo Distillery. Cooling water that has passed through the heat exchangers will be routed to cooling towers and brought back to ambient temperature. The water will then be returned to the cooling system for re-use in cooling the Diageo Distillery.

Stormwater Management. The Diageo Project includes erosion and sedimentation controls designed to minimize soil loss during construction and a Stormwater Pollution Prevention Plan ("SWPPP") to protect water quality during construction and operation. Rooftop stormwater runoff will be routed to a cistern and used on site, both for process make-up water and to meet firefighting requirements. Runoff from roads and parking surfaces will be routed to an on-site sedimentation basin for treatment. After treatment, the water will be discharged to the existing drainage system on the Park.

Sanitary Sewer. Sanitary sewage generated on the Diageo Distillery Site will be discharged through a connection to the VIWMA sewer line located in the highway adjacent to the property. The sewer connection will be used only to dispose of sanitary sewage generated from the restrooms and sinks in the office building. No washwater or process water will be discharged to the sanitary sewer. It is anticipated that VIWMA also will provide for connection to a sewer line adjacent to the Diageo Warehouse Site.

Solid Waste. VIWMA will provide for disposal of solid waste from the Diageo Distillery to VIWMA facilities. When operational, the Diageo Distillery and water treatment processes will generate approximately six truckloads of waste daily. This will include normal office waste generated by the employees, but the bulk of the waste will consist of digested biologically stable non-odiferous bio-solids. Over the short term, approximately two years, this solid waste will be disposed of or utilized at a nearby VIWMA landfill. Diageo USVI is exploring options for reuse with Renaissance and VIWMA so that, in the future, the material can be re-used for energy recovery, landfill capping, or agricultural soil amendment.

### **The Rum Production Process**

Molasses Receiving and Storage. Diageo USVI currently plans to receive molasses required for rum production via ocean-going tankers. The tankers will be equipped with pumps to transfer the molasses onshore to two molasses storage tanks located adjacent to the port. Each molasses storage tank is anticipated to store four million gallons of molasses.

The molasses will be pumped from the storage tanks to the main process site where it will undergo a dilution and sterilization process. Following this process, the molasses will be cooled using heat exchangers and the pH balance of the molasses will be adjusted by the addition of a sulfuric acid solution. The molasses will then be diluted with water down to an acceptable level for fermentation. A measured amount of nutrient salts will be added to the molasses to ensure efficient fermentation. The molasses will be separated into two solutions: one for use as feed for yeast and the other for fermentation. Yeast will metabolize the sugar contained in the molasses and generate the waste product of ethyl alcohol. Ethyl alcohol is the proper name for the vernacular 'alcohol' contained in alcoholic beverages.

Fermentation. The next step of the process is fermentation. A vial containing laboratory yeast culture is introduced into a small inoculation tank. A portion of the molasses solution prepared in the above-described manner will be combined with the yeast culture and maintained under conditions conducive for yeast propagation. A portion of this product will be used as feed for future yeast propagation. Another portion of the solution will be sent to tanks for fermentation. The fermentation tanks are covered and hermetically sealed. Carbon dioxide collects during fermentation and is removed, passed through a gas scrubber and then released into the atmosphere. The fermentation tanks will be outfitted with agitation and extraction pumps to ensure thorough and complete fermentation and to extract the fermented product to holding tanks for distillation. The fermentation tanks will be kept at a constant temperature optimal for fermentation by an external cooling system.

Distillation. Once the fermentation process is complete the solution is sent to connected tanks for distillation, which separates and purifies ethanol from the fermenter product stream. The distillation process uses five columns and a vacuum process to refine different qualities of rum that yield different tastes to the final bottled rum.

The first column separates unwanted components in the fermented solution, which consist mainly of water, dissolved salts, and other inert solids. The second column is used to increase the overall alcoholic concentration of the rum by removing additional water from the solution. In the third column,

the concentrated alcohol is fed with large quantities of water, which washes the alcohol and serves to liberate a set of impurities from the main bulk of the alcohol. The impurities accumulate at the top of the column and are extracted as required. In the fourth column, the diluted alcohol from the previous column is concentrated and further impurities are extracted to refine the alcohol. The alcohol produced in this column will be used for making light rum, which has a more subtle taste and lesser complexities of flavor than medium or dark rum distillates. The fifth column is the last stage in the distillation process and is used for making an extremely pure form of alcohol, which is almost flavorless. This alcohol is used when blending rums.

The first, second and fifth columns are operated under vacuums, which lower the boiling points of the liquids in these columns. The third and fourth columns are operated under pressure, thus elevating the boiling point temperatures of the liquids in these columns. The vapors produced at the top of the pressurized columns are at a higher temperature than the boiling liquids in the vacuum columns. The advantages of this unique vacuum/pressure system are a reduction of steam consumption, promoting efficiency, reducing by-products contained in the rum and allowing for flexibility in flavoring the rum.

Diageo Distillery Washwater Treatment System. The byproducts of the distillation process, referred to as aqueous, molasses receiving and storage effluent, are to be processed in a washwater treatment system so as to (i) recover valuable byproducts, (ii) enable the recycling of as much of the water as practicable, by producing an outlet stream which meets TPDES standards and (iii) minimize solid waste generation.

Rum Tanks and Barrel Filling at the Diageo Distillery. The rum distillate, at approximately 190 proof, will be surged in a series of tanks, mixed with water and diluted down to 150 proof and then filled into barrels. Product storage tanks sufficient for the forecast level of production under the Diageo Agreement will be used to store rum before and after barrel filling. All tanks will be installed outdoors on reinforced footings in a concrete slab area. Pumps will be supplied which will allow rum to be transferred between product storage tanks and the barrel dumping and filling operations. Filled barrels will be transported by truck to the Diageo Warehouse Site for storage and aging.

Barrel Maturation at the Diageo Warehouse Site. The aged rum will be stored in barrels which will be placed on pallets and stacked. The rums will be aged in accordance with Diageo USVI's product quality specifications. At the completion of aging, barrels will be returned by truck to the Diageo Distillery Site for further disposition.

Barrel Emptying and Shipping. At the completion of rum aging, full barrels returned to the Diageo Distillery Site will be emptied by an automated dump and fill system into product storage tanks. This aged rum will then be loaded as required into isotank containers to be transported to the rum's final destination outside of the Virgin Islands.

## **Diageo Service Agreement**

Diageo USVI entered into a Service Agreement (the "Service Agreement") with Diageo North America, Inc., Diageo Americas Supply, Inc. and Diageo Canada, Inc. (except for Diageo, collectively, the "Service Providers") as of June 17, 2008. The Service Agreement provides for the Service Providers to provide various services, including project general administration, treasury and financial services, corporate relations, information technology and legal, human resources and other corporate services in support of the Diageo Project in consideration for annual payment of fees invoiced to Diageo USVI in accordance with the Service Agreement. The agreement is expected to stay in place so long as the Service Providers continue rendering services to Diageo USVI. Diageo USVI has the right to terminate the Service Agreement with immediate effect upon notice to Service Providers.

## **Insurance Coverage During Operation**

Once Diageo USVI assumes possession of the Diageo Project upon completion of construction, and throughout the term of its operation, Diageo USVI shall be responsible for maintaining insurance on the Diageo Project. Pursuant to the Diageo Agreement, Diageo USVI has agreed to maintain commercially reasonable insurance (either as part of Diageo plc's global insurance program or on a stand-alone basis) against the risks of hurricane, earthquake, fire or other damage to the Diageo Project that might result in a commercially significant reduction in the output of rum that can be produced at the Diageo Project. Furthermore, Diageo USVI has agreed to rebuild the Diageo Project as soon as possible following the occurrence of an event that is insurable at the time of occurrence of the event at commercially reasonable rates.

## **THE U.S. SPIRITS INDUSTRY**

According to the Beverage Information Group's 2008/2009 Liquor Handbook (February 2009) (the "Liquor Handbook"), in 2008, total distilled spirits consumption in the United States increased 2.1% from 2007 to 185.5 million 9-liter cases. This gain marks the eleventh consecutive year of volume growth for the distilled spirits industry. Volume growth is forecasted to continue over the next five years. Total distilled spirits consumption is expected to reach 188.0 million 9-liter cases by the end of 2009, which is an increase of 1.3% from 2008. The Liquor Handbook is a comprehensive sources of information on U.S. spirits and sales trends. It includes consumption and projection information by category and by market, tracks leading brands, and reports historical data.

Two important historical trends cited in the Liquor Handbook include the more than 10 years of rapid expansion by above-premium tier spirits. Another more recent trend noted is that the majority of market launches in 2007 involved either fruit flavors or high-quality or reserve line extensions across almost every spirits category. New flavors are not only stimulating growth in categories like vodka and rum, but also are influencing other categories.

Continued downward pressure on the U.S. economy has had little negative impact on Total Beverage Alcohol ("TBA") growth, but has slowed growth in ultra premium spirits. Although 2008 was actually the low point, with TBA servings growth estimated at 1.7% in 2009, TBA servings growth is expected to rise slightly to 2.0% in 2009. While the current economic environment has dampened growth in the premium sector across all consumer goods, it has not halted the demand for premium products. Premium and ultra premium tiers are expected to continue to outperform the overall market and drive growth in spirits. Although ultra premium spirits growth is estimated to have slowed to 3.5% in 2008, and is forecast to be slightly higher in 2009, at 3.7%, these growth rates are expected to outpace the lower tiers of spirits. Beer growth is expected to return to the more historical level of around 1% growth, but will continue to lose share to spirits and wine. Long-term demographics and consumer trends remain favorable for premium spirits and wine.

## **THE RUM INDUSTRY**

The rum industry has sustained growth since the mid-1990's. The U.S. rum consumption has been rising for thirteen consecutive years since 1995. The U.S. rum category has had cumulative annual growth rate ("CAGR") of 2.4% over this time period. The two leading brands in the premium category are Bacardi and Captain Morgan, which is produced by Diageo America Supply, and the rum for both brands is currently produced in Puerto Rico. Diageo North America, Inc. has been steadily increasing its share of the rum market due to the strong growth of Captain Morgan, which has enjoyed a CAGR of 8.4% in volume over the last five years. In fact, Captain Morgan continues to have the strongest growth rate among the Top 10 Premium Spirit Brands. In 2008, it had a global growth rate of 6%, following a growth rate of 7% in 2007. In 2007, Captain Morgan was the 3rd largest spirits brand in the United States.

Like Captain Morgan, Cruzan's leading brand has also been gaining market share. With average annual growth rate of 11.5% between 2002 and 2008, its market share has increased from 1.8% to 2.6%.

This transition to premium brands has mirrored the nation's demographics as the now-aging baby boom generation dominates consumption, replacing the habits of the previous generations. Meanwhile, succeeding cohorts have more disposable income and have clearly driven the bar and restaurant market for premium cocktails. Total whiskey consumption, including American and imported, has declined while rum and vodka consumption has increased. Rum's share of the market has increased each year since 1992.

### Distilled Spirits Market Share

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<b>Whiskeys</b>	27.5%	26.8%	26.1%	25.5%	24.9%	24.6%
U.S. Whiskeys	11.8	11.6	11.4	11.2	10.9	10.9
Scotch	5.7	5.5	5.3	5.1	5.0	4.9
Other Whiskeys <sup>1</sup>	10.0	9.7	9.4	9.2	9.0	8.9
<b>Non-Whiskeys</b>	72.5%	73.2%	73.9%	74.5%	75.1%	75.2%
Rums	12.3	12.6	12.9	12.9	13.2	13.3
Vodka	26.2	26.7	27.1	28.0	28.9	29.7
Gin	6.9	6.6	6.4	6.2	6.2	6.1
Others <sup>2</sup>	27.1	27.3	27.5	27.4	26.8	26.5

NOTE: Numbers may not add to totals due to rounding.

<sup>1</sup> Includes Canadian and Irish Whiskeys.

<sup>2</sup> Includes brandies, cordials, liqueurs, tequila and prepared cocktails.

Source: 2008/2009 Adams Liquor Handbook.

### **Rum Production in the Virgin Islands**

Rum currently produced in the Virgin Islands is exported to the United States mainland, primarily in bulk, and sold to local and regional bottlers and rectifiers for sale under a variety of private label and regional brand names, and to certain other bottlers for use in prepared cocktails, liqueurs and drink mixes. In recent years, Virgin Islands rum also has entered the more lucrative branded segment. Approximately 7.12 million proof gallons of rum were exported from the Virgin Islands to the United States in calendar year 2008.

### **Molasses Subsidy Payments**

Molasses, the principal ingredient of rum, is a commodity traded in the international commodity markets. The price of molasses is therefore subject to fluctuation based upon supply and demand. All of the molasses used by Cruzan and expected to be used by Diageo USVI is purchased on such commodity markets from sources outside the Virgin Islands.

The Government maintains a program, first established in 1967, by which it stabilizes the cost of molasses to Virgin Islands rum producers to compensate for the demise of the local sugar cane industry and ensure the competitive pricing of rum produced in the Virgin Islands. The effect of the molasses subsidy payments is to maintain the competitive position of Virgin Islands rum producers relative to the rum producers in other countries where local molasses supplies are readily available.

The following table sets forth the molasses subsidies that have been provided by the Government to the Virgin Islands rum producers since 1997. The molasses subsidy payments in Fiscal Years 2007 and 2008 were higher than in previous years due to the significant increase in the cost of fuel, resulting in an increase in shipping costs, the purchase of a larger quantity of hi-test molasses instead of blackstrap molasses in an effort to reduce the negative environmental impact from rum manufacturing waste disposal, and the purchase of a larger quantity of molasses due to increased demand for rum.

**Molasses Subsidy Payments**  
**1997 to 2008**

<u>Fiscal Year</u>	<u>Molasses Gallons</u>	<u>Dollar Amount Subsidy</u>
1997	5,296,588	\$ 2,175,536
1998	8,289,330	1,300,000
1999	7,763,675	2,969,725
2000	8,790,630	1,955,253
2001	8,622,054	2,570,733
2002	8,607,398	2,558,300
2003	6,765,893	3,477,651
2004	7,065,528	4,000,000
2005	7,214,391	4,400,000
2006	8,731,734	6,900,000
2007	8,322,254	8,373,641
2008	9,089,615	11,678,677

The molasses subsidy is administered by the Commissioner of Finance through the establishment of a legislatively mandated Molasses Subsidy Fund. The Molasses Subsidy Fund consists of amounts appropriated from time to time by the Legislature exclusively for such purpose. Amounts available in the Molasses Subsidy Fund are requisitioned by rum producers, such as Cruzan (and after 2012, Diageo USVI) on a quarterly basis by certified vouchers to the Commissioner of Finance upon receipt of each molasses shipment. The Commissioner of Finance verifies the accuracy of such vouchers and makes payment to rum producers, such as Cruzan (and after 2012, Diageo) to the extent funds are available in the Molasses Subsidy Fund. The Governor includes in each Annual Budget submitted for approval to the Legislature a request for appropriation for the Molasses Subsidy Fund based upon an estimate of molasses to be acquired by local producers for the next Fiscal Year. In the event of a deficiency in the Molasses Subsidy Fund, the Commissioner of Finance would seek legislative appropriation of additional funds, as required, from the Legislature. The Legislature is not obligated to appropriate such amounts. To date, however, the Legislature has not failed to appropriate an amount sufficient to satisfy the obligations of the Molasses Subsidy Fund.

Cruzan currently receives the molasses subsidy from the Government through the Molasses Subsidy Fund. Diageo USVI will receive the Molasses Subsidy payments under the Diageo Agreement directly from the Diageo Matching Fund Revenues.

**St. Croix Molasses Pier**

In 1999, the Government completed construction of the St. Croix Molasses Pier, which has increased the capacity for deliveries and storing of molasses and has improved the safety and availability of molasses cargoes to the island of St. Croix. The improvements consist of the construction of a 560 foot sheet pile bulkhead, dredging of the harbor to a depth of 32 feet, construction of a concrete apron for loading and unloading the tankers, installation of apron lighting and potable water lines, security fencing, asphalt and molasses pipelines and a partial roadway complete with lighting and signage. A highway connecting the St. Croix Molasses Pier to the Container Port was completed in 2002. The on-pier molasses storage capacity for the Virgin Islands rum producer currently is 3 million gallons.

The St. Croix Molasses Pier improvements have allowed the docking of larger cargo vessels and the delivery of larger molasses shipments thereby reducing the per gallon shipping cost of imported molasses. It is expected that these improvements will enable the Government to continue to provide



favorable conditions within the Virgin Islands for both producers of rum to maintain their competitiveness in the United States rum market. Notwithstanding the improvements to the St. Croix Molasses Pier, it is Diageo USVI's current intention to utilize the pier facilities at the Park for the delivery of its molasses shipments, which facilities are reasonably expected to accommodate all of Diageo USVI's needs.

## **BONDHOLDER RISKS**

**THE PURCHASE AND OWNERSHIP OF THE SERIES 2009 BONDS MAY INVOLVE INVESTMENT RISKS. PROSPECTIVE PURCHASERS OF THE SERIES 2009 BONDS ARE URGED TO READ THIS OFFICIAL STATEMENT IN ITS ENTIRETY. THIS SECTION ENTITLED “BONDHOLDER RISKS” DOES NOT PURPORT TO PROVIDE INVESTORS WITH A COMPREHENSIVE ENUMERATION OF ALL POSSIBLE INVESTMENT RISKS. THE FACTORS SET FORTH BELOW, AMONG OTHERS, MAY AFFECT THE SECURITY FOR THE SERIES 2009 BONDS. IN ADDITION TO POSSIBLE ADVERSE EFFECTS ON SECURITY FOR THE SERIES 2009 BONDS, PURCHASERS SHOULD BE AWARE THAT THESE FACTORS, AMONG OTHERS, MAY ADVERSELY AFFECT THE MARKET PRICE OF THE SERIES 2009 BONDS IN THE SECONDARY MARKET. (SEE ALSO “SECURITY AND SOURCE OF PAYMENT FOR THE SERIES 2009 BONDS.”)**

### **Matching Fund Revenues Sole Security for Matching Fund Loan Notes**

The Series 2009 Bonds are secured solely by the Trust Estate, including the Series 2009 Loan Notes. The Series 2009 Loan Notes are special limited obligations of the Government. The Government has not pledged its full faith and credit to the payment of the Series 2009 Loan Notes. The Series 2009 Loan Notes are secured solely by the Matching Fund Revenues, which are derived solely from the sale of rum produced in the Virgin Islands and sold in the United States and subject to federal excise taxation. There can be no assurance that the United States Congress will not reduce the rate of the federal excise tax that qualifies for transfer to the Government under the applicable provisions of the Revised Organic Act and the Code or that the Congress will not amend or eliminate the federal excise tax. There also can be no assurance as to the amount of local duties, taxes and fees which will be collected by the United States Treasury and Customs and which would be available for transfer to the Government. (See “MATCHING FUND REVENUES.”)

### **Limited Production Source**

All the rum currently produced in the Virgin Islands is produced by a single producer, Cruzan. The ownership of Cruzan has changed six times in the past 25 years. No assurance can be given that the current owner or any future owner will continue rum production in the Virgin Islands. There also can be no assurance that another producer will not enter the bulk rum market and compete with Cruzan or Diageo USVI or that Cruzan or Diageo USVI will maintain their current and planned production levels. (See “THE RUM INDUSTRY.”)

### **Cruzan Agreement**

The Government and Cruzan are currently negotiating the terms of the Cruzan Agreement pursuant to which it is expected that Cruzan will agree to construct the Cruzan Washwater Treatment Facility, expand the Cruzan Facility, continue its operations and increase the production of branded rum products on St. Croix, in return for certain economic development incentives from the Government, including grant financing to pay the costs of the Cruzan Washwater Treatment Facility and expansion of the existing Cruzan Distillery. (See “CRUZAN – Proposed Cruzan Agreement.”)

The proposed Cruzan Agreement must be ratified by the Legislature. The Legislature will simultaneously approve any bond authorization for the capital required for the Cruzan Washwater Treatment Facility and the improvement and expansion of the Cruzan Facility. While Cruzan and the Government have substantially agreed to the terms of the proposed Cruzan Agreement, there can be no assurance that the Legislature will ratify any such agreement or authorize the issuance of bonds for the

capital required for the Cruzan Washwater Treatment Facility or the improvement and expansion of the Cruzan Facility. There can also be no assurance that if the Legislature does not ratify such agreement or authorize the issuance of bonds for the capital required for the Cruzan Washwater Treatment Facility and the improvement and expansion of the Cruzan Facility, that Cruzan will continue to produce rum in the Virgin Islands in amounts sufficient to generate Matching Fund Revenues in amounts necessary to pay the principal and interest due and payable on the Series 2009 Bonds.

### **Diageo Project Risks**

*Construction Risks.* Diageo USVI has leased property and/or purchased property on which it plans to build the Diageo Distillery, the Diageo Washwater Treatment Facility and the Diageo Warehouses. While guaranteed maximum price contracts have been entered into with contractors who are experienced in constructing facilities of the type planned, there can be no assurance that the Diageo Project will be completed on time or within budget. Delays in the commencement of rum production could delay exports of rum to the U.S. mainland and the collection of the Diageo Matching Fund Revenues. Matching Fund Revenues derived from the Diageo Project are expected to be a significant source for the payment of the debt service on the Series 2009 Bonds.

The Government has made a grant to Diageo USVI to pay the costs of the Diageo Project pursuant to the Diageo Agreement. The total costs of the Diageo Project to be paid by the Government, including the grant to Diageo USVI, capitalized interest on the Subordinated Diageo Matching Fund Bonds, funding of the Series 2009 Senior Lien Debt Service Reserve Subaccount in an amount necessary to meet the Series 2009 Debt Service Reserve Requirement and to pay the costs of issuing the Subordinated Diageo Matching Fund Bonds, may not exceed \$250 million. Current estimates for the total costs of the Diageo Project are approximately \$184 million. If the costs of the Diageo Project were to exceed current estimates and the \$250 million maximum grant from the Government were insufficient to cover such costs, no assurances can be given that Diageo USVI would complete the Diageo Project or would have the resources to complete the Diageo Project or that the Authority or the Legislature would make additional funds available to complete the Diageo Project. Additionally, final design plans for the Diageo Project have not been completed, the completion of which may result in additional costs associated with construction.

*Required Permits.* Diageo USVI currently does not have all required Virgin Islands and federal permits to proceed with and complete the development and construction of the Diageo Project. Certain permits frequently take a significant amount of time to obtain. If Diageo USVI pursues design plans that materially deviate from those contained in permit applications Diageo USVI has submitted or in permits Diageo USVI has already obtained, Diageo USVI may be required to obtain permit amendments or submit new permit applications. Additionally, some permits may be issued with conditions, the compliance with which could result in delays to construction as well as additional costs. No assurances can be given that Diageo USVI will receive all necessary permits or that all necessary permits will be received in time to complete the construction and commence operation of the Diageo Project as planned in 2010, so that the export of rum can commence as planned in 2012. Delay in the shipment of rum to the U.S. mainland and related inability to generate Matching Fund Revenues derived from the Diageo Project could adversely affect the Authority's ability to pay debt service on the Series 2009 Bonds.

*Leasing Risk.* Diageo USVI has executed a lease agreement with Renaissance to lease the Diageo Distillery Site. The lease agreement provides for a leasehold term of up to 60 years, assuming the exercise of five optional 10-year extensions, which are at the sole discretion of Diageo USVI (provided that no monetary event of default shall have occurred and be continuing at the time of any exercise of an extension). By leasing instead of purchasing the Diageo Distillery Site, Diageo USVI assumes certain risks of leasing property such as the risk of lease termination or default under the lease. If the lease is

terminated, there are no assurances that Diageo USVI will be able to continue to operate the Diageo Distillery on the Diageo Distillery Site. (See “THE DIAGEO PROJECT - Diageo Distillery and Diageo Washwater Treatment Facility – Lease Agreement.”)

*Historical and Archeological Resources.* Archaeological investigations were conducted by an archaeologist approved by and in consultation with VISHPO at both the Diageo Warehouse Site and the Diageo Distillery Site. The investigations revealed the presence of historical resources at the Diageo Distillery Site. Diageo USVI and its archaeological consultant continue to work with VISHPO to further characterize the historical resources and to ensure that the proposed Diageo Distillery will not result in adverse impacts to the resources. Should the resources prove to be significant, recovery and mitigation of impact to those resources may be costly and may cause delays in the construction and timely completion of the Diageo Project.

### **Outside Factors Could Affect Cruzan and the Diageo Project**

The state of the world and/or the U.S. economy, particularly a recession, increased costs of raw materials for construction, fuel or personnel, terrorist attacks and international hostilities, among other things, could have an adverse impact on Cruzan and the Diageo Project in ways that may not be anticipated and currently cannot be quantified.

### **Diageo Environmental Risks**

The sites on which the Diageo Project will be built only recently came under Diageo USVI control. While certain environmental reviews have been undertaken, all environmental risks of the sites may not be known at this time. Should significant environmental problems be encountered during the construction of the various buildings that constitute the Diageo Project, remediation of those problems may be costly and may cause delays in the construction and timely completion of the Diageo Project.

### **Cruzan Environmental Risks**

Cruzan has been notified by the EPA that the discharge from its distillery operations may be harmful to certain marine life exposed thereto. Cruzan and the Government are currently working with the DPNR and the EPA to identify appropriate mitigation measures. On or about July 1, 2009, Cruzan submitted to the EPA its proposed treatment options that, once implemented, would result in the cessation of its effluent discharge into the ocean. Cruzan’s TPDES Permit, which expires on March 1, 2013, requires Cruzan to complete the design and engineering phase of this project by March 1, 2010, construction by December 1, 2011, and implementation by March 1, 2012. There can be no assurance that Cruzan will meet the required timelines or that the funding of such mitigation measures by Cruzan or liability and costs associated with possible enforcement action by the EPA will not adversely affect Cruzan’s financial condition or operations.

### **Diageo and Cruzan Operational Risks**

The Series 2009 Bonds are secured by and payable from the Matching Fund Revenues. Any interruption of operation and production of rum at the Cruzan Facility or delay in the construction of the Diageo Project or upon completion of construction, any interruption in operation of the Diageo Project, could cause a reduction in Matching Fund Revenues and an inability of the Authority to pay debt service on the Series 2009 Bonds. The interruption of, or delay in, production of rum may be caused by, for example, damage to the ship unloading station at the St. Croix Molasses Pier or at the Diageo Distillery Site, which could render any of them unavailable for the receipt of molasses. (See “THE DIAGEO

PROJECT - Diageo Distillery and Diageo Washwater Treatment Facility” and “CRUZAN.”) Neither Cruzan nor Diageo USVI is obligated to pay debt service on the Series 2009 Bonds.

### **Competing Facility**

Currently Cruzan Rum is the only rum produced in the Virgin Islands. Cruzan currently produces bulk rum and although Diageo USVI plans to produce bulk rum at its facility in the Virgin Islands, Diageo USVI currently plans to use a significant portion of that bulk rum for the production of all of its Captain Morgan branded products to be sold in the United States beginning in 2012. Should the production plans of either company change so that they compete for market share, no assurance can be given that such action would not adversely affect rum production in the Virgin Islands and exports to the U.S., causing a reduction in the amount of Matching Fund Revenues available to pay debt service on the Series 2009 Bonds.

### **Seismic Risks and Other Natural Disasters**

Since September 1989, the Virgin Islands has been affected by two major hurricanes that caused significant damage on all three islands, and three less severe storms. Although historically significant hurricanes had occurred in average intervals of 12 to 15 years, between 1916 and 1989 there had been no major hurricanes. The Virgin Islands, which is in “Seismic Zone 3”, also experiences earthquake tremors from time to time, including one measuring 3.3 on the Richter Scale in March 2007, one measuring 4.0 in June 2007 and one measuring 4.5 in April 2009. There has not been, however, a major earthquake since the early 1900s. A “Seismic Zone 3” region is an area in immediate proximity to a major fault system. Damage from an earthquake in such a zone can include the collapse of buildings and other structures that are not designed to seismic standards.

If a hurricane were to strike or an earthquake to occur causing significant damage to the Cruzan Facility or the Diageo Facilities, no assurance can be given as to how much time would be required to resume production and export of rum from either or both plants. Significant delays could adversely affect the Authority’s ability to pay debt service on the Series 2009 Bonds.

### **Government’s Obligation to Make Payments**

The Government is obligated to make certain annual payments and provide certain economic development incentives to Cruzan under the Cruzan Marketing Support Agreement and from the Molasses Subsidy Fund and to Diageo USVI, as provided in the Diageo Agreement. All such payments pursuant to the Diageo Agreement will be made by the Diageo Special Escrow Agent in accordance with the terms of the Diageo Special Escrow Agreement. The Government has never failed to provide economic development incentives as agreed upon. If the Government fails to make the required payments or provide the required benefits to Diageo USVI, Diageo USVI can terminate the Diageo Agreement in such event, there would be a reduced source of revenues to pay debt service on the Series 2009 Bonds.

### **Proposed Legislation**

In April, Puerto Rico’s Resident Commissioner to the U.S. House of Representatives introduced legislation, H.R. 2122, that would limit the amount of any subsidy paid from Matching Fund Revenues by either the Virgin Islands or by Puerto Rico to any private company to a maximum of ten percent (10%) of such revenues. The proposed legislation provides that, if the Secretary of the Treasury finds that either of the two governments has provided a subsidy greater than 10%, the amount in excess of 10% shall be paid over to the treasury of the government not providing the subsidy. The proposed legislation has seven co-sponsors and has been referred to the House Ways and Means Committee but no hearings have been

scheduled and no further action has been taken on it. If the proposed legislation were in effect today, a portion of the benefits to be received by Diageo USVI from the Government under the Diageo Agreement would be inconsistent with the law.

### **Insurance Coverage**

Cruzan and Diageo USVI each maintain insurance at levels they consider to be commercially reasonable. There is no assurance, however, that the insurance coverage maintained by Cruzan will be sufficient to cover Cruzan from all loss that can occur to the Cruzan Facility or that the insurance coverage maintained by Diageo USVI during the construction of the Diageo Project, will be sufficient to cover Diageo USVI from all loss that can occur during the construction period. There also is no assurance that the insurance coverage Cruzan has in place or that Diageo USVI will have in place once the Diageo Project is constructed and operating, will be sufficient to cover Cruzan's or Diageo's loss in revenues or the Government's loss in the receipt of Matching Fund Revenues or Diageo Matching Fund Revenues that can occur due to a material interruption in production of rum at the Cruzan Distillery or the Diageo Facility.

### **Demand for Rum**

The distilled spirits industry generally embarked on a period of expansion in the past decade. The rum industry has exhibited robust growth in market share during this period and in particular there has been growth in premium brand products and flavored spirits. In 2008, total distilled spirits consumption in the United States increased 2.1% from 2007 to 185.5 million 9-liter cases. This gain marks the eleventh consecutive year of volume growth for the distilled spirits industry and volume growth is forecasted to continue over the next five years. Rum's share of the distilled spirits market has increased every year since 1992. Since 1995, rum consumption in volume has never increased at less than a 3.7% annual rate. Rum consumption grew from 22.0 million cases in 2005, to 24.6 million cases in 2008, an increase of 11.4% (or 5.4% per year over 1994). Total distilled spirits consumption grew by less than 2.4% over that time span. No assurance can be given, however, as to the future level of consumption of distilled spirits, or rum consumption, or the future market share to be garnered by Virgin Islands rum. (See "THE U.S. SPIRITS INDUSTRY" and "THE RUM INDUSTRY.")

### **Fluctuating Price, Availability and Subsidy on Molasses**

Molasses, the principal ingredient of rum, is a commodity traded in the international commodity markets. The market price of molasses is therefore subject to fluctuation based upon supply and demand. Substantially all of the molasses used for Virgin Islands rum production is purchased on such commodity markets from sources outside the Virgin Islands. While the Government has provided a subsidy to stabilize the price of molasses and has covenanted to take actions necessary to maintain the subsidy in the future, and in the case of Cruzan and Diageo USVI, has contractually obligated itself to make subsidy payments to these rum producers, there can be no assurance that such subsidy will be available in the future, that the Virgin Islands Legislature, if required, will appropriate such funds in the future, or that funds will be available for appropriation (though the molasses subsidy for Diageo USVI is not subject to appropriation by the Legislature). There also can be no assurance that molasses will be available for the Virgin Islands rum production in the international commodity markets or, if available, will be at a price that the Government can afford to subsidize. Moreover, no assurances can be given as to the continued viability of Diageo USVI, Cruzan or other Virgin Islands rum producers in the event that the molasses subsidy payments are decreased or discontinued in the future. (See "THE RUM INDUSTRY.")

## **Federal Bankruptcy Code Presently Inapplicable**

The Bankruptcy Reform Act of 1978, Title 11, United States Code, as amended (the “Federal Bankruptcy Code”), provides a codified regime for the reorganization, liquidation or debt adjustment of various types of insolvent debtors. Generally, only a “person” or a “municipality” may be debtor in a case under the Federal Bankruptcy Code. The term “person” includes individuals, partnerships and corporations, but does *not* include any “governmental unit.” For purposes of the Federal Bankruptcy Code, a governmental unit which cannot file for protection under the Federal Bankruptcy Code, would be (i) a Territory, such as the Government, or (ii) an instrumentality of a Territory, such as the Authority. The term “municipality” is defined to mean a political subdivision or public agency or instrumentality of a State. Therefore, neither the Government nor the Authority may be a debtor in a case under the Federal Bankruptcy Code. Consequently, no Bondholder would be able to avail itself of Federal Bankruptcy Code provisions protecting rights of creditors since the Government and the Authority are both “governmental units” and neither of them is a “person” or a “municipality” for purposes thereof. Since neither the Authority nor the Government is subject to the Federal Bankruptcy Code, there can be no assurance as to how the pledge of Matching Fund Revenues would be treated by a court of law in the event of an insolvency or other inability to pay debt by the Government or the Authority.

## **Change in Law**

There can be no assurance that the United States Congress will not reduce the rate of the federal excise tax that qualifies for transfer to the Government under the applicable provisions of the Revised Organic Act and the Code or that the Congress will not amend or eliminate the federal excise tax. If the Cover Over Rate is reduced below \$10.50 per proof gallon, Diageo USVI is permitted to terminate the Diageo Agreement and is not required to pay liquidated damages. There also can be no assurance as to the amount of local duties, taxes and fees which will be collected by the Treasury and Customs and which would be available for transfer to the Government. (See “MATCHING FUND REVENUES.”)

From time to time, legislation is proposed that may have an adverse effect on the Matching Fund Revenues or the Diageo Agreement. (See “THE DIAGEO AGREEMENT.”)

## **Matching Fund Revenues Payment Procedures**

Section 1645 of Title 48 of the United States Code, as amended (P. L. 95-348) (“Section 1645”), which provides for annual prepayments of Matching Fund Revenues to the Government, was enacted in 1978 and establishes procedures which are inconsistent with previously enacted Section 7652 of the Code that provides for quarterly payments of Matching Fund Revenues. The legislative history of Section 1645 contains indications of an intent to amend the Code; however, this was not reflected in the final version of Section 1645, as adopted. DOI and Treasury have consistently followed Section 1645 since 1978. There can be no assurance that these payment procedures will not be changed by statute or otherwise.

## **LITIGATION**

There is no litigation pending or, to the best of the knowledge of the Authority or the Government, threatened (i) seeking to restrain or enjoin the issuance of the Series 2009 Bonds or the collection of the Matching Fund Revenues pledged under the Indenture, (ii) in any way contesting or affecting the authority for the issuance of the Series 2009 Bonds or the validity or the binding effect of the Series 2009 Bonds, the resolutions of the Authority authorizing and implementing the Series 2009 Bonds or the Indenture, the Series 2009 Loan Agreement or the Series 2009 Loan Notes or (iii) in any way contesting the creation, existence, powers or jurisdiction of the Authority or the validity or the effect of

the Diageo Agreement, the Series 2009 Loan Agreement or the Series 2009 Loan Notes or application of the proceeds of the Series 2009 Bonds for the purposes planned.

## **TAX MATTERS**

### **General**

In the opinion of Hawkins Delafield & Wood LLP, Bond Counsel to the Authority, under existing statutes and court decisions and assuming continuing compliance with certain tax covenants described herein, (i) interest on the Series 2009A-1 Bonds, the Series 2009B Bonds and the Series 2009C Bonds (collectively, the “Federally Tax-Exempt Bonds”) is excluded from gross income for Federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), (ii) interest on the Federally Tax-Exempt Bonds is not treated as a preference item in calculating the alternative minimum tax imposed on individuals and corporations under the Code, and (iii) (a) interest on the Series 2009A-1 Bonds is not included in the adjusted current earnings of corporations for purposes of calculating the alternative minimum tax and (b) interest on the Series 2009B Bonds and the Series 2009C Bonds, however, is included in the adjusted current earnings of certain corporations for purposes of calculating the alternative minimum tax imposed on such corporations. In rendering its opinion, Bond Counsel has relied on certain representations, certifications of fact, and statements of reasonable expectations made by the Authority in connection with the Federally Tax-Exempt Bonds, and Bond Counsel has assumed compliance by the Authority with certain ongoing covenants to comply with applicable requirements of the Code to assure the exclusion of interest on the Federally Tax-Exempt Bonds from gross income under Section 103 of the Code.

In the opinion of Bond Counsel to the Authority, interest on the Series 2009A-2 Bonds (the “Taxable Bonds”) is included in gross income for Federal income tax purposes, pursuant to the Code.

In addition, in the opinion of Bond Counsel to the Authority, under existing statutes, interest on the Series 2009 Bonds is exempt from personal income tax imposed by the United States Virgin Islands, or by any state, territory, or possession or by any political subdivision thereof or by the District of Columbia.

Bond Counsel expresses no opinion regarding any other Federal or state tax consequences with respect to the Federally Tax-Exempt Bonds. Bond Counsel renders its opinion under existing statutes and court decisions as of the issue date, and assumes no obligation to update, revise or supplement its opinion to reflect any action hereafter taken or not taken, or any facts or circumstances that may hereafter come to its attention, or changes in law or in interpretations thereof that may hereafter occur, or for any other reason. Bond Counsel expresses no opinion on the effect of any action hereafter taken or not taken in reliance upon an opinion of other counsel on the exclusion from gross income for Federal income tax purposes of interest on the Federally Tax-Exempt Bonds, or under state and local tax law.

## **FEDERALLY TAX EXEMPT BONDS**

### **Certain Ongoing Federal Tax Requirements and Covenants**

The Code establishes certain ongoing requirements that must be met subsequent to the issuance and delivery of the Federally Tax-Exempt Bonds in order that interest on the Federally Tax-Exempt Bonds be and remain excluded from gross income under Section 103 of the Code. These requirements include, but are not limited to, requirements relating to use and expenditure of gross proceeds of the Federally Tax-Exempt Bonds, yield and other restrictions on investments of gross proceeds, and the arbitrage rebate requirement that certain excess earnings on gross proceeds be rebated to the Federal



government. Noncompliance with such requirements may cause interest on the Federally Tax-Exempt Bonds to become included in gross income for Federal income tax purposes retroactive to their issue date, irrespective of the date on which such noncompliance occurs or is discovered. The Authority has covenanted to comply with certain applicable requirements of the Code to assure the exclusion of interest on the Federally Tax-Exempt Bonds from gross income under Section 103 of the Code.

### **Certain Collateral Federal Tax Consequences**

The following is a brief discussion of certain collateral Federal income tax matters with respect to the Federally Tax-Exempt Bonds. It does not purport to address all aspects of Federal taxation that may be relevant to a particular owner of a Series 2009 Bond. Prospective investors, particularly those who may be subject to special rules, are advised to consult their own tax advisors regarding the Federal tax consequences of owning and disposing of the Federally Tax-Exempt Bonds.

Prospective owners of the Federally Tax-Exempt Bonds should be aware that the ownership of such obligations may result in collateral Federal income tax consequences to various categories of persons, such as corporations (including S corporations and foreign corporations), financial institutions, property and casualty and life insurance companies, individual recipients of Social Security and railroad retirement benefits, individuals otherwise eligible for the earned income tax credit, and taxpayers deemed to have incurred or continued indebtedness to purchase or carry obligations the interest on which is excluded from gross income for Federal income tax purposes. Interest on the Federally Tax-Exempt Bonds may be taken into account in determining the tax liability of foreign corporations subject to the branch profits tax imposed by Section 884 of the Code.

### **Original Issue Discount**

“Original issue discount” (“OID”) is the excess of the sum of all amounts payable at the stated maturity of a Series 2009 Bond (excluding certain “qualified stated interest” that is unconditionally payable at least annually at prescribed rates) over the issue price of that maturity. In general, the “issue price” of a maturity means the first price at which a substantial amount of the Federally Tax-Exempt Bonds of that maturity was sold (excluding sales to bond houses, brokers, or similar persons acting in the capacity as underwriters, placement agents, or wholesalers). In general, the issue price for each maturity of Federally Tax-Exempt Bonds is expected to be the initial public offering price set forth on the cover page of the Official Statement. Bond Counsel further is of the opinion that, for any Federally Tax-Exempt Bonds having OID (a “Discount Bond”), OID that has accrued and is properly allocable to the owners of the Discount Bonds under Section 1288 of the Code is excludable from gross income for Federal income tax purposes to the same extent as other interest on the Federally Tax-Exempt Bonds.

In general, under Section 1288 of the Code, OID on a Discount Bond accrues under a constant yield method, based on periodic compounding of interest over prescribed accrual periods using a compounding rate determined by reference to the yield on that Discount Bond. An owner’s adjusted basis in a Discount Bond is increased by accrued OID for purposes of determining gain or loss on sale, exchange, or other disposition of such Bond. Accrued OID may be taken into account as an increase in the amount of tax-exempt income received or deemed to have been received for purposes of determining various other tax consequences of owning a Discount Bond even though there will not be a corresponding cash payment.

Owners of Discount Bonds should consult their own tax advisors with respect to the treatment of original issue discount for Federal income tax purposes, including various special rules relating thereto, and the state and local tax consequences of acquiring, holding, and disposing of Discount Bonds.

## **Bond Premium**

In general, if an owner acquires a Series 2009 Bond for a purchase price (excluding accrued interest) or otherwise at a tax basis that reflects a premium over the sum of all amounts payable on the Series 2009 Bond after the acquisition date (excluding certain “qualified stated interest” that is unconditionally payable at least annually at prescribed rates), that premium constitutes “bond premium” on that Series 2009 Bond (a “Premium Bond”). In general, under Section 171 of the Code, an owner of a Premium Bond must amortize the bond premium over the remaining term of the Premium Bond, based on the owner’s yield over the remaining term of the Premium Bond determined based on constant yield principles (in certain cases involving a Premium Bond callable prior to its stated maturity date, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the lowest yield on such bond). An owner of a Premium Bond must amortize the bond premium by offsetting the qualified stated interest allocable to each interest accrual period under the owner’s regular method of accounting against the bond premium allocable to that period. In the case of a tax-exempt Premium Bond, if the bond premium allocable to an accrual period exceeds the qualified stated interest allocable to that accrual period, the excess is a nondeductible loss. Under certain circumstances, the owner of a Premium Bond may realize a taxable gain upon disposition of the Premium Bond even though it is sold or redeemed for an amount less than or equal to the owner’s original acquisition cost. Owners of any Premium Bonds should consult their own tax advisors regarding the treatment of bond premium for Federal income tax purposes, including various special rules relating thereto, and state and local tax consequences, in connection with the acquisition, ownership, amortization of bond premium on, sale, exchange, or other disposition of Premium Bonds.

## **Information Reporting and Backup Withholding**

Information reporting requirements apply to interest paid on tax-exempt obligations, including the Federally Tax-Exempt Bonds. In general, such requirements are satisfied if the interest recipient completes, and provides the payor with, a Form W-9, “Request for Taxpayer Identification Number and Certification”, or unless the recipient is one of a limited class of exempt recipients, including corporations. A recipient not otherwise exempt from information reporting who fails to satisfy the information reporting requirements will be subject to “backup withholding”, which means that the payor is required to deduct and withhold a tax from the interest payment, calculated in the manner set forth in the Code. For the foregoing purpose, a “payor” generally refers to the person or entity from whom a recipient receives its payments of interest or who collects such payments on behalf of the recipient.

If an owner purchasing a Series 2009 Bond through a brokerage account has executed a Form W-9 in connection with the establishment of such account, as generally can be expected, no backup withholding should occur. In any event, backup withholding does not affect the excludability of the interest on the Federally Tax-Exempt Bonds from gross income for Federal income tax purposes. Any amounts withheld pursuant to backup withholding would be allowed as a refund or a credit against the owner’s Federal income tax once the required information is furnished to the Internal Revenue Service.

## **Miscellaneous**

Tax legislation, administrative actions taken by tax authorities, and court decisions, whether at the Federal or state level, may adversely affect the tax-exempt status of interest on the Federally Tax-Exempt Bonds under Federal or state law and could affect the market price or marketability of the Federally Tax-Exempt Bonds. Prospective purchasers of the Federally Tax-Exempt Bonds should consult their own tax advisors regarding the foregoing matters.

## FEDERALLY TAXABLE BONDS

### Certain Federal Tax Consequences

The following discussion is a brief summary of the principal United States Federal income tax consequences of the acquisition, ownership and disposition of Taxable Bonds by original purchasers of the Taxable Bonds who are “U.S. Holders”, as defined herein. This summary (i) is based on certain relevant provisions of the Code under existing law and are subject to change at any time, possibly with retroactive effect; (ii) assumes that the Taxable Bonds will be held as “capital assets”; and (iii) does not discuss all of the United States Federal income tax consequences that may be relevant to a holder in light of its particular circumstances or to holders subject to special rules, such as insurance companies, financial institutions, tax-exempt organizations, dealers in securities or foreign currencies, persons holding the Taxable Bonds as a position in a “hedge” or “straddle”, or holders whose functional currency (as defined in Section 985 of the Code) is not the United States dollar, or holders who acquire Taxable Bonds in the secondary market.

Holders of Taxable Bonds should consult with their own tax advisors concerning the United States Federal income tax and other consequences with respect to the acquisition, ownership and disposition of the Taxable Bonds as well as any tax consequences that may arise under the laws of any state, local or foreign tax jurisdiction.

### Original Issue Discount

In general, if Original Issue Discount (“OID”) is greater than a statutorily defined *de minimis* amount, a holder of a Taxable Bond must include in Federal gross income (for each day of the taxable year, or portion of the taxable year, in which such holder holds such Taxable Bond) the daily portion of OID, as it accrues (generally on a constant yield method) and regardless of the holder’s method of accounting. “OID” is the excess of (i) the “stated redemption price at maturity” over (ii) the “issue price”. For purposes of the foregoing: “issue price” means the first price at which a substantial amount of the Taxable Bond is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers).; “stated redemption price at maturity” means the sum of all payments, other than “qualified stated interest”, provided by such Taxable Bond; “qualified stated interest” is stated interest that is unconditionally payable in cash or property (other than debt instruments of the issuer) at least annually at a single fixed rate; and “de minimis amount” is an amount equal to 0.25 percent of the Taxable Bond’s stated redemption price at maturity multiplied by the number of complete years to its maturity. A holder may irrevocably elect to include in gross income all interest that accrues on a Taxable Bond using the constant-yield method, subject to certain modifications.

## **Original Issue Premium**

In general, if a Taxable Bond is originally issued for an issue price (excluding accrued interest) that reflects a premium over the sum of all amounts payable on the Taxable Bond other than “qualified stated interest” (a “Taxable Premium Bond”), that Taxable Premium Bond will be subject to Section 171 of the Code, relating to bond premium. In general, if the holder of a Taxable Premium Bond elects to amortize the premium as “amortizable bond premium” over the remaining term of the Taxable Premium Bond, determined based on constant yield principles (in certain cases involving a Taxable Premium Bond callable prior to its stated maturity date, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the highest yield on such bond), the amortizable premium is treated as an offset to interest income; the holder will make a corresponding adjustment to her basis in the Taxable Premium Bond. Any such election is generally irrevocable and applies to all debt instruments of the holder (other than tax-exempt bonds) held at the beginning of the first taxable year to which the election applies and to all such debt instruments thereafter acquired. Under certain circumstances, the holder of a Taxable Premium Bond may realize a taxable gain upon disposition of the Taxable Premium Bond even though it is sold or redeemed for an amount less than or equal to the holder's original acquisition cost.

## **Disposition and Defeasance**

Generally, upon the sale, exchange, redemption, or other disposition (which would include a legal defeasance) of a Taxable Bond, a holder generally will recognize taxable gain or loss in an amount equal to the difference between the amount realized (other than amounts attributable to accrued interest not previously includable in income) and such holder's adjusted tax basis in the Taxable Bond.

The Authority may cause the deposit of moneys or securities in escrow in such amount and manner as to cause the Taxable Bonds to be deemed to be no longer outstanding under the Indenture (a “defeasance”). (See APPENDIX B - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE AND, THE FOURTH SUPPLEMENTAL INDENTURE AND THE SPECIAL ESCROW AGREEMENT - Defeasance” herein). For Federal income tax purposes, such defeasance could result in a deemed exchange under Section 1001 of the Code and a recognition by such owner of taxable income or loss, without any corresponding receipt of moneys. In addition, the character and timing of receipt of payments on the Taxable Bonds subsequent to any such defeasance could also be affected.

## **Backup Withholding and Information Reporting**

In general, information reporting requirements will apply to non-corporate holders with respect to payments of principal, payments of interest, and the accrual of OID on a Taxable Bond and the proceeds of the sale of a Taxable Bond before maturity within the United States. Backup withholding may apply to holders of Taxable Bonds under Section 3406 of the Code. Any amounts withheld under the backup withholding rules from a payment to a beneficial owner, and which constitutes over-withholding, would be allowed as a refund or a credit against such beneficial owner's United States Federal income tax provided the required information is furnished to the Service.

## **U.S. Holders**

The term “U.S. Holder” means a beneficial owner of a Taxable Bond that is: (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or of any political subdivision thereof, (iii) an estate the income of which is subject to United States Federal income taxation regardless of its source or (iv) a trust whose administration is subject to the primary jurisdiction of a United States court and which has one or more United States fiduciaries who have the authority to control all substantial decisions of the trust.

## **IRS Circular 230 Disclosure**

The advice under the caption “FEDERALLY TAXABLE BONDS”, concerning certain Federal income tax consequences of the acquisition, ownership and disposition of the Taxable Bonds, was written to support the marketing of the Taxable Bonds. To ensure compliance with requirements imposed by the Internal Revenue Service, Bond Counsel to the Authority informs you that any Federal tax advice contained in this Official Statement (including any attachments) or in writings furnished by Bond Counsel to the Authority is not intended to be used, and cannot be used by any bondholder, for the purpose of avoiding penalties that may be imposed on the bondholder under the Code, and (ii) the bondholder should seek advice based on the bondholder’s particular circumstances from an independent tax advisor.

## **Miscellaneous**

Tax legislation, administrative action taken by tax authorities, and court decisions, whether at the Federal or state level, may adversely affect the status of interest on the Taxable Bonds under Federal or state law and could affect the market price or marketability of the Taxable Bonds.

Holder and prospective purchasers of the Taxable Bonds should consult their own tax advisors regarding the foregoing matters.

## **FINANCIAL STATEMENTS**

Audited financial statements of the Government for the Fiscal Year ended September 30, 2006, and the Audited financial statements of the Authority for the fiscal year ended September 30, 2008, are available from the Government or the Authority, as applicable, the Municipal Securities Rulemaking Board (the “MSRB”) and Digital Assurance Certification, L.L.C., the dissemination agent responsible for maintaining the Authority’s compliance with its continuing disclosure undertaking with respect to the Series 2009 Bonds. (See “CONTINUING DISCLOSURE; DISCLOSURE DISSEMINATION.”)

The Series 2009 Bonds are secured solely by the Trust Estate established under the Indenture, including amounts payable to the Authority by the Government under the Series 2009 Loan Notes. Such amounts are to be derived solely from Matching Fund Revenues. The audited financial statements of the Government and the audited financial statements of the Authority do not contain detailed information regarding Matching Fund Revenues or the Series 2009 Bonds. The Series 2009 Bonds do not constitute a general obligation of the Government or the Authority. Consequently, the audited financial statements of the Government and the Authority may be of limited relevance to a prospective purchaser of the Series 2009 Bonds.

## **VERIFICATION**

IHS Global Insight (USA), Inc., an economic consulting firm, has been engaged to verify Matching Fund Revenues received by the Government from Fiscal Year 1992 through Fiscal Year 2009 and to project Matching Fund Revenues for Fiscal Years 2010 through 2038. (See APPENDIX D - “VERIFICATION AND PROJECTION OF MATCHING FUND REVENUES FROM RUM SHIPMENTS TO THE US.”)

## **LEGAL OPINIONS**

Certain legal matters incident to the issuance of the Series 2009 Bonds are subject to the approving opinion of Hawkins Delafield & Wood LLP, New York, New York, Bond Counsel to the Authority. The approving opinion of Bond Counsel, substantially in the form set forth in APPENDIX G hereto, is to be furnished upon delivery of the Series 2009 Bonds. Bond Counsel’s approving opinion does not express any opinion with respect to information in this Official Statement. However, Bond Counsel will deliver an opinion at closing addressed solely to the Underwriters for their purposes which opinion will address the accuracy of certain information in this Official Statement. Certain legal matters will be passed upon for the Authority by its counsel, Birch, deJongh & Hindels PLLC, St. Thomas, Virgin Islands, and for the Underwriters by their counsel, Duane Morris LLP, New York, New York.

## **FINANCIAL ADVISOR**

The Authority has retained Fiscal Strategies Group of Swarthmore, Pennsylvania, as financial advisor in connection with the issuance of the Series 2009 Bonds. Although Fiscal Strategies Group has assisted in the preparation of this Official Statement, Fiscal Strategies Group is not obligated to undertake, and has not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness or fairness of the information contained in this Official Statement.

## **CONTINUING DISCLOSURE; DISCLOSURE DISSEMINATION**

### **Continuing Disclosure**

The Authority has covenanted, and the Government has acknowledged and accepted, for the benefit of Bondholders, to provide certain financial information and operating information relating to the Authority and the Government by not later than 270 days following the end of the Authority’s Fiscal Year beginning with the Fiscal Year ending September 30, 2010 (the “Annual Report”), and to provide notices of the occurrence of certain enumerated events. The Annual Report will be filed by the Authority with the MSRB. In addition, the Authority has covenanted to provide within forty-five (45) days of the end of each quarter of each Fiscal Year, quarterly summaries of the information provided by the Virgin Islands Bureau of Alcohol Control Board on rum shipments and excise taxes collected as reported by the Bureau of Alcohol, Tobacco and Firearms submitted to DOI with respect to Matching Fund Revenues (the “Quarterly Report”). The specific nature of the information to be contained in the Annual Report, the Quarterly Report and the notices of material events is summarized in APPENDIX F – “FORM OF CONTINUING DISCLOSURE CERTIFICATE OF THE AUTHORITY.” These covenants have been made in order to assist the Underwriters in complying with the United States Securities and Exchange Commission Rule 15c2-12 (the “Rule”).

During construction of the Diageo Project and until the commencement of rum exportation from the Virgin Islands to the U.S. mainland, Diageo USVI will provide: (i) quarterly updates on construction progress of the Diageo Project against the plans for completion of construction by November 2010; (ii) confirmation that distillation of the rum at the Diageo Distillery has commenced as planned by November

2010; (iii) information with regard to any changes in the date for commencement of exportation of rum from the Virgin Islands to the U.S. mainland; and (iv) confirmation when exportation from the Virgin Islands begins, specifying the number of proof gallons of bulk rum initially exported and whether such quantities are consistent with the production plans set forth in the Diageo Agreement. After the Diageo Project becomes fully operational, Diageo USVI will promptly provide information with respect to any material interruption of production that could materially impact the supply of rum used to manufacture Captain Morgan branded products to be sold in the U.S. and any material deviation from the production plans set forth in the Diageo Agreement.

Cruzan will promptly provide information with respect to any material interruption of production that could materially impact the supply of rum products to be sold by Cruzan in the U.S.

**In connection with certain prior continuing disclosure undertakings, the Government has failed to provide its audited financial statements on a timely basis. The Authority and the Government have complied with all other requirements of such undertakings in respect of the provision of financial information and operating data required thereby. The Government has established procedures designed to assure full compliance with such undertakings in the future.**

### **Disclosure Dissemination Agent**

In order to provide certain continuing disclosure with respect to the Series 2009 Bonds in accordance with the Rule, the Authority has entered into a Disclosure Dissemination Agent Agreement (the “Disclosure Dissemination Agreement”) for the benefit of the Bondholders with Digital Assurance Certification, L.L.C. (“DAC” or “Disclosure Dissemination Agent”), under which the Authority has designated DAC as its disclosure dissemination agent.

The Disclosure Dissemination Agent has only the duties specifically set forth in the Disclosure Dissemination Agreement. The Disclosure Dissemination Agent’s obligation to deliver the information at the times and with the contents described in the Disclosure Dissemination Agreement is limited to the extent the Authority has provided such information to the Disclosure Dissemination Agent as required by the Disclosure Dissemination Agreement. The Disclosure Dissemination Agent has no duty with respect to the content of any disclosures or notice made pursuant to the terms of the Disclosure Dissemination Agreement. The Disclosure Dissemination Agent has no duty or obligation to review or verify any information in the Annual Reports, Quarterly Reports, audited financial statements, notice of Notice Event or Voluntary Report (in each case as such terms are defined in the Disclosure Dissemination Agreement), or any other information, disclosures or notices provided to it by the Authority and shall not be deemed to be acting in any fiduciary capacity for the Authority, the Government, the Bondholders or any other party. The Disclosure Dissemination Agent has no responsibility for the Authority’s failure to report to the Disclosure Dissemination Agent a Notice Event or a duty to determine the materiality thereof. The Disclosure Dissemination Agent shall have no duty to determine or liability for failing to determine whether the Authority or the Government has complied with the Disclosure Dissemination Agreement. The Disclosure Dissemination Agent may conclusively rely upon certifications of the Authority at all times.

Unless otherwise required by the MSRB, all notices, documents and information provided to the MSRB shall be provided to the MSRB’s Electronic Municipal Markets Access (EMMA) system, the current Internet Web address of which is [www.emma.msrb.org](http://www.emma.msrb.org).

All notices, documents and information provided to the MSRB shall be provided in an electronic format as prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

## RATINGS

Fitch Ratings Inc., Moody's Investor Service, Inc. and Standard & Poors Rating Services have assigned the Series 2009A Bonds and the Series 2009B Bonds an underlying rating of "BBB", "Baa2" and "BBB", respectively, and the Series 2009C Bonds an underlying rating of "BBB-", "Baa2" and "BBB-", respectively. A rating, including any related outlook with respect to potential changes in such rating, reflects only the view of the Rating Agency giving such rating and is not a recommendation to buy, sell or hold the Series 2009 Bonds. An explanation of the procedure and methodology used by each Rating Agency and the significance of the above ratings may be obtained from the Rating Agencies. The above ratings may be changed at any time and there is no assurance that either rating will continue for any given period of time or that either rating will not be revised downward or withdrawn entirely by the Rating Agency furnishing the same, if in the judgment of such Rating Agency, circumstances so warrant. Any such downward revision or withdrawal of either rating is likely to have an adverse effect on the market price of the Series 2009 Bonds.

## UNDERWRITING

The Series 2009A Bonds are expected to be delivered on October 8, 2009. The Series 2009B Bonds and the Series 2009C Bonds are expected to be delivered on October 28, 2009.

The Series 2009 Bonds are being purchased by Citigroup Global Markets Inc. as the representative of the underwriters (the "Underwriters") named in the Purchase Contract entered into by and between the Authority and the Underwriters dated October 1, 2009 (the "Purchase Contract"). The purchase price payable by the Underwriters for the Series 2009A-1 Bonds is \$86,148,675.44 (representing the \$86,350,000.00 par amount of the Series 2009A-1 Bonds plus a net original issue premium of \$404,496.15 less an underwriting discount of \$605,820.71). The purchase price payable by the Underwriters for the Series 2009A-2 Bonds is \$8,694,974.26 (representing the \$8,650,000.00 par amount of the Series 2009A-2 Bonds plus a net original issue premium of \$60,278.50 less an underwriting discount of \$15,304.24.) The purchase price payable by the Underwriters for the Series 2009B Bonds is \$278,172,647.23 (representing the \$266,330,000.00 par amount of the Series 2009B Bonds plus a net original issue premium of \$13,591,854.70 less an underwriting discount of \$1,749,207.47). The purchase price payable by the Underwriters for the Series 2009C Bonds is \$101,040,235.87 (representing the \$97,510,000.00 par amount of the Series 2009C Bonds plus a net original issue premium of \$4,161,156.70 less an underwriting discount of \$630,920.83). The Underwriters are obligated to purchase all of the Series 2009B Bonds and the Series 2009C Bonds, if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the Purchase Contract, the approval of certain legal matters by counsel and certain other conditions

The initial public offering price and other terms respecting the offering and sale of the Series 2009 Bonds may be changed from time to time by the Underwriters after the Series 2009 Bonds are released for sale, and the Series 2009 Bonds may be offered and sold at prices other than the initial offering price, including sales to certain dealers (including dealers who may sell the Series 2009 Bonds into investment accounts, some of which may be managed by the Underwriters) and certain dealer banks and banks acting as agents.

Citigroup Global Markets Inc., one of the Underwriters of the Series 2009 Bonds, has entered into a retail brokerage joint venture with Morgan Stanley. As part of the joint venture, Citigroup Global Markets Inc. will distribute municipal securities to retail investors through the financial advisor network of a new broker-dealer, Morgan Stanley Smith Barney LLC. This distribution arrangement became effective on June 1, 2009. As part of this arrangement, Citigroup Global Markets Inc. will compensate Morgan Stanley Smith Barney LLC for its selling efforts with respect to the Series 2009 Bonds.



J.P. Morgan Securities Inc., one of the Underwriters of the Series 2009 Bonds, has entered into an agreement (the “Distribution Agreement”) with UBS Financial Services Inc. for the retail distribution of certain municipal securities offerings, including the Bonds, at the original issue prices. Pursuant to the Distribution Agreement (if applicable for this transaction), J.P. Morgan Securities Inc. will share a portion of its underwriting compensation with respect to the Bonds with UBS Financial Services Inc.

### **MISCELLANEOUS**

In this Official Statement, any summaries or descriptions of provisions in the Indenture, the Series 2009 Loan Agreement, the Series 2009 Loan Notes and all references to other materials not purported to be quoted in full are only brief outlines of certain provisions thereof and do not constitute complete statements of such documents or provisions. Reference is hereby made to the complete documents relating to such matters for further information, copies of which may be obtained from the principal corporate trust office of the Trustee.

Any statement in this Official Statement involving matters of estimates or opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the Authority and the owners or holders of, or of interests in, any of the Series 2009 Bonds.

Financial and statistical information has been provided by the Authority and the Government, certain of its agencies and instrumentalities and other sources deemed reliable by the Authority and the Government. The Underwriters are not responsible for any of such information nor have the Underwriters independently verified such information.

This Official Statement is submitted in connection with the sale of the Series 2009 Bonds and may not be reproduced or used, as a whole or in part, for any other purpose. The execution and delivery of this Official Statement has been duly authorized by the Authority.

### **VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY**

By:       /s/John P. deJongh, Jr.        
John P. deJongh, Jr.  
Chairman

Dated: October 1, 2009

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**GLOSSARY OF CERTAIN DEFINED TERMS**

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## APPENDIX A

### GLOSSARY OF CERTAIN DEFINED TERMS

Certain terms used in the Indenture, the Fourth Supplemental Indenture, the Special Escrow Agreement and the Loan Agreement are defined below unless otherwise defined herein or the context clearly indicates otherwise. When and if such terms are used in this Official Statement they shall have the meanings set forth below. Any capitalized term used in this Official Statement regarding the Indenture, the Fourth Supplemental Indenture, the Special Escrow Agreement and the Loan Agreement and not defined herein shall have the meaning given such term by the Indenture, the Fourth Supplemental Indenture, the Special Escrow Agreement and the Loan Agreement.

**Accreted Value** means with respect to any Bond that is a Capital Appreciation Bond, for each authorized denomination, an amount equal to the principal amount of such Capital Appreciation Bond (determined on the basis of the initial offering price for such denomination at maturity thereof) plus the amount of earnings which would be produced on the investment of such principal amount, assuming compounding (as set forth in the applicable Supplemental Indenture) beginning on the dated date of such Capital Appreciation Bond and ending at the maturity date thereof, at a yield which, if produced until maturity, will produce an amount equal to such denomination at maturity. As of any Valuation Date, the Accreted Value of any Capital Appreciation Bond means the amount set forth for such date in the applicable Supplemental Indenture authorizing such Bond and as of any date other than a Valuation Date, the sum of (i) the Accreted Value on the preceding Valuation Date and (ii) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date, using for such calculation 30 day months and a 360 day year and (2) the difference between the Accreted Values for such Valuation Dates.

**Act** means, collectively, the Virgin Islands Revised Organic Act, 48 U.S.C. 1574, et seq. (West 1987), the laws of the Virgin Islands including Title 29, Chapter 15 of the Virgin Islands Code, 1988 V.I. Act 5365, 1998 V.I. Act 6227, and 2009 V.I. Act 7081 as amended by 2009 V.I. Act 7095, and other applicable law, as the same may be amended from time to time.

**Amendment No. 3 to Special Escrow Agreement** shall mean the Amendment No. 3 to Special Escrow Agreement, dated as of October 1, 2009, by and among the Government, the Authority and the Special Escrow Agent.

**Act of Bankruptcy** means (i) the entity under consideration shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or substantially all of its assets; (ii) a custodian shall have been appointed with or without consent of such entity; (iii) such entity has made a general assignment for the benefit of creditors, or has filed a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law; (iv) such entity has filed an answer admitting the material allegations of a petition in any bankruptcy, reorganization or insolvency proceeding, or taken any action for the purpose of effecting any of the foregoing; (v) a petition in bankruptcy shall have been filed against such entity and shall not have been dismissed for a period of 60 consecutive days; (vi) an order for relief has been entered under the Bankruptcy Code with respect to such entity; (vii) an order, judgment or decree shall have been entered, without the application, approval or consent of such entity by any court of competent jurisdiction approving a petition seeking reorganization of such entity or appointing a receiver, trustee, custodian or liquidator of such entity or substantially all of its assets, and such order, judgment or decree shall have continued unstayed and in effect for any period of 60 consecutive days; or (viii) such entity shall have suspended the transaction of its usual business.

**Additional Bonds** means Bonds other than the Initial Series of Bonds.

**Adjusted Debt Service Requirement** means, for any period, as of any date of calculation, the aggregate Debt Service on Outstanding Senior Lien Bonds or Subordinated Lien Bonds, for such period taking into account the following adjustments:

- (i) With respect to Bonds that bear interest at a Variable Interest Rate, the aggregate Debt Service thereon is determined as if each such Bond bore interest at the Certified Interest Rate; provided, however, (1) if the Authority (A) enters into a Qualified Swap Agreement with a Swap Provider requiring the Authority to pay a fixed interest rate on a notional amount, and (B) has made a determination that such Qualified Swap Agreement was entered into for the purpose of providing substitute interest payments for a particular maturity of Bonds in a principal amount equal to the notional amount of the Qualified Swap Agreement, then during the term of such Qualified Swap Agreement and so long as the Swap Provider under such Qualified Swap Agreement is not in default under such Qualified Swap Agreement, the interest rate on such Bonds shall be determined as if such Bonds bore interest at the fixed interest rate payable by the Authority under such Qualified Swap Agreement, and (2) if (A) Bonds of a specific maturity within a Series bear interest at a Variable Interest Rate and Bonds which bear a Variable Interest Rate of another Series with the same maturity are issued in an equal principal amount to the first such Series of Bonds of the same maturity and (B) the Variable Interest Rate of the first Series of such Bonds varies inversely to the Variable Interest Rate of the second Series of such Bonds of the same maturity so that the combined interest rate for the aggregate principal amount of such Bonds of the same specific maturity for both such Series is determined by the Authority to result in a combined fixed interest rate, then so long as the same principal amount of each maturity of such Series of Bonds remain Outstanding, the aggregate Debt Service thereon shall be determined as if all such Variable Rate Bonds of such Series and maturity bore interest at the combined fixed interest rate so determined by the Authority with respect to such aggregate principal amount of such Bonds.
- (ii) With respect to Fixed Interest Rate Bonds, if the Authority (1) enters into a Qualified Swap Agreement with a Swap Provider requiring the Authority to pay a variable interest rate on a notional amount and (2) has made a determination that such Qualified Swap Agreement was entered into for the purpose of providing substitute interest payments for a particular maturity of Bonds in a principal amount equal to the notional amount of the Qualified Swap Agreement, then during the term of such Qualified Swap Agreement and so long as the Swap Provider under such Qualified Swap Agreement is not in default under such Qualified Swap Agreement the interest rate on such Bonds is determined as if such Bonds bore interest at the Certified Interest Rate on the notional amount of such Bonds.
- (iii) Except to the extent described in (iv) below, with respect to Bonds secured by a Credit Facility, the aggregate Debt Service thereon shall be deemed to include all periodic Bond Related Costs and other payments to (including any payments required to reimburse) the related Credit Provider (including any Debt Service Reserve Account Credit Provider), but shall not include any amounts payable as principal of and interest and premium with respect to any reimbursement obligation to such Credit Provider except and to the extent that such payments on such reimbursement obligation are required to be made to the Credit Provider in excess of any corresponding Debt Service with respect to such Bonds during such period.

- (iv) With respect to Optional Tender Bonds, the aggregate Debt Service thereon shall not include any amounts payable to a Credit Provider pursuant to any reimbursement obligation arising as the result of the payment of any purchase price with respect to such Bonds on a Purchase Date except to the extent that, and for any period during which, the Authority is obligated to reimburse the Credit Provider for payments made by such Credit Provider directly or indirectly in satisfaction of any obligation to purchase such Bonds on any Purchase Date following the application of any proceeds of any remarketing of such Bonds.
- (v) The aggregate Debt Service for any period on any Bonds shall not include (1) any interest which is payable from Capitalized Interest which is to be transferred to the Debt Service Accounts for payment of interest on such Bonds or (2) the amount of Debt Service on Bonds to be paid from amounts in a Debt Service Reserve Account at the time of such computation for the period in question, but only if any such amount described in (1) or (2) is available and is to be applied under the applicable Supplemental Indenture to make interest payments on such Bonds when due.
- (vi) If the Authority enters into a Qualified Swap Agreement with a Swap Provider requiring the Authority to pay any amount in excess of the amount to be received by the Authority in connection therewith for the period for which any calculation of Adjusted Debt Service Requirements is to be made hereunder, then, to the extent not taken into account in (i) and (ii) above, the net amount of such payments which may be required of the Authority (using the Certified Interest Rate or its equivalent for such purpose if such amount is subject to any variation and excluding any breakage fees or termination payments paid by the Authority) shall be included in Adjusted Debt Service Requirements.

For purposes of this definition of Adjusted Debt Service Requirements, the principal and interest portions of the Accreted Value of Capital Appreciation Bonds and the Appreciated Value of any Deferred Interest Bonds becoming due at maturity or by virtue of Mandatory Sinking Fund Requirements shall be included in the calculation of accrued and unpaid and accruing interest or principal installments on the date on which or for the period during which such amounts become due and payable unless otherwise specified in the Supplemental Indenture authorizing such Capital Appreciation Bonds or Deferred Interest Bonds.

**Aggregate Debt Service** for any period means, as of any date of calculation, the sum of the amounts of Debt Service for such period with respect to the Bonds.

**Annual Administrative Fee** means the amount authorized to be transferred annually from the Senior Lien Expense Account and the Subordinated Lien Expense Account to the Authority to pay the Authority's expenses in accordance with the annual budget approved by the Board of the Authority.

**Annual Debt Service** means, as of any date of calculation with respect to a specified Bond Year, Debt Service plus any premium, if any, payable for the Bonds in the respective Bond Year.

**Appreciated Value** means with respect to any Bond that is a Deferred Interest Bond until the Interest Commencement Date thereon, for each authorized denomination, an amount equal to the principal amount of such Deferred Interest Bond (determined on the basis of the initial offering price for such denomination at the Interest Commencement Date thereof) plus the amount of earnings which would be produced on the investment of such principal amount, assuming compounding (as set forth in the applicable Supplemental Indenture) beginning on the dated date of such Deferred Interest Bond and ending on the Interest Commencement Date, at a yield which, if produced until the Interest

Commencement Date, will produce an amount equal to such denomination at the Interest Commencement Date. As of any Valuation Date, the Appreciated Value of any Bond that is a Deferred Interest Bond means the amount set forth for such date in the Supplemental Indenture authorizing such Deferred Interest Bond and as of any date other than a Valuation Date accruing for that period or due and payable on that date, the sum of (i) the Appreciated Value on the preceding Valuation Date and (ii) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date, and (2) the difference between the Appreciated Values for such Valuation Dates.

**Approved Project** means any public improvement or public undertaking authorized by act of the Legislature of the Virgin Islands and by resolution of the Authority to be financed with the proceeds of Authority bonds.

**Authority** means the Virgin Islands Public Finance Authority, a body corporate and politic constituting a public corporation and autonomous governmental instrumentality of the Government of the Virgin Islands, or, if said Authority shall be abolished, any authority, board, body or officer succeeding to the principal functions thereof.

**Authorized Officer** means the Executive Director or Chairman of the Authority or any other person authorized by the Authority to perform an act or sign a document on behalf of the Authority for purposes of the Indenture or a Supplemental Indenture as set forth in a Supplemental Indenture or a certificate of the Authority which has been delivered to the Trustee.

**Bankruptcy Code** means the Federal Bankruptcy Code, 11 U.S.C. §§101, et seq. and any amendments thereto.

**Board** means the Board of Directors of the Authority.

**Bond** or **Bonds** means any bond or bonds, as the case may be, issued pursuant to the Indenture or any Supplemental Indenture, and may include notes, commercial paper, or other obligations and shall include Senior Lien Bonds and Subordinate Lien Bonds.

**Bond Counsel** means an attorney or firm of attorneys with nationally recognized expertise in matters relating to the issuance of obligations by states and local governments and political subdivisions thereof.

**Bond Register** means the register maintained by the Bond Registrar pursuant to the Indenture.

**Bond Registrar** means the Trustee, any successor trustee or bond registrar appointed as Bond Registrar pursuant to the Indenture.

**Bond Related Costs** means (i) all costs, fees and expenses of the Authority incurred or reasonably related to any Liquidity Facility, any Credit Facility, any remarketing or other secondary market transactions and any Qualified Swap Agreement (whether requiring the Authority to pay fixed or variable amounts and excluding breakage fees on or termination payments under such Qualified Swap Agreements) that the Authority has determined was entered into for the purposes of providing substitute interest payments for a particular Series or maturity of Bonds, (ii) initial and acceptance fees of any Fiduciary together with any fees of Bond Counsel, attorneys, feasibility consultants, engineers, financial advisors, remarketing agents, rebate consultants, accountants and other advisors retained by the Authority in connection with a Series of Bonds, and (iii) any other fees, charges and expenses that may be lawfully



incurred by the Authority relating to Bonds, including, without limitation, any obligation of the Authority to a Credit Provider for a Series of Bonds to repay or reimburse any amounts paid by such Credit Provider due to payment under such Credit Facility and any interest on such repayment obligation.

**Bond Service Charges** means for any applicable time period or date, principal of and premium, if any, and interest payments due and the fees, expenses and costs of the Trustee, Bond Registrar and Paying Agent, if any, on any of the Bonds accruing for that period or due and payable on that date. In determining Bond Service Charges accruing for any period or due and payable on any date, Mandatory Sinking Fund Requirements accruing for that period or due on that date shall be included together with any amount required to be paid for the replenishment of any Bond Reserve Account.

**Bond Year** means for each Series of Bonds a period of twelve (12) consecutive months beginning on October 1 in any calendar year and ending on September 30 of the succeeding calendar year; provided that for purposes of Section 148 of the Code the Authority may elect a different Bond Year for any Series of Bonds.

**Borrower** means the Government of the Virgin Islands.

**Business Day** means any day that is not a Saturday, Sunday or legal holiday in the United States Virgin Islands or a day on which the Trustee, the Special Escrow Agent or banking institutions organized under the laws of the United States Virgin Islands are legally authorized to close.

**Calculation Agent** shall have the meaning provided for such term in the Diageo Special Escrow Agreement.

**Capital Appreciation Bonds** means any Bonds as to which interest is payable only at the maturity or prior redemption thereof. For the purposes of (i) receiving payment of the redemption price, if any, of a Capital Appreciation Bond that is redeemed prior to maturity, and (ii) computing the principal amount of Capital Appreciation Bonds held by the Owner thereof in giving any notice, consent, request, or demand pursuant to the applicable Supplemental Indenture for any purpose whatsoever, the Accreted Value of a Capital Appreciation Bond as of a specific date shall be deemed to be its principal amount as of such date.

**Capitalized Interest** means that portion of the proceeds of any Series of Bonds together with any available earnings thereon that are intended to be used to pay interest due or to become due on any Bonds.

**Certified Interest Rate** means a rate estimated and certified by the financial advisor to the Authority as the rate that would be borne by a Variable Rate Bond if on the date of such certification such Bond was issued as a Bond bearing interest at a fixed rate to its stated maturity.

**Code** means the Internal Revenue Code of 1986, as amended from time to time. Each reference to a Code section herein shall be deemed to include the Treasury Regulations proposed or in effect thereunder and applicable to the Bonds.

**Construction Account** means the account of that name established pursuant to the Indenture.

**Corporate Trust Office** means the principal corporate trust office of the Trustee in which the corporate trust business of the Trustee shall, at any particular time, be principally administered, which office is, at the date as of which the Indenture is dated, located at 10161 Centurion Parkway, Jacksonville, FL 32256 except that, with respect to presentation of Bonds for payment or registration of transfer and exchange and the location of the Bond Register, such term means the office or agency of the Bond

Registrar in said city at which at any particular time its corporate agency business shall be conducted, which is, at the date as of which the Indenture is dated, is the same address as the corporate trust office as indicated above.

**Cost of Issuance** means the items of expense payable or reimbursable directly or indirectly by the Authority and related to the authorization, sale and issuance of Bonds which items of expense shall include without limiting the generality of the foregoing: travel expenses; printing costs; costs of reproducing documents; computer fees and expenses; filing and recording fees; initial fees and charges of the Trustee; initial fees and charges of Credit Providers or other parties (including specifically providers of bond insurance policies and surety policies) pursuant to remarketing, indexing or similar agreements; discounts; legal fees and charges; auditing fees and expense; financial advisor's fees and charges; costs of credit ratings; insurance premiums; fees and charges for execution, transportation and safekeeping of Bonds; and other administrative or other costs of issuing, carrying and repaying such Bonds and investing the proceeds thereof.

**Cost of Issuance Account** means the account of that name established pursuant to the Indenture.

**Counsel's Opinion** means an opinion signed by an attorney or firm of attorneys of recognized standing in the field of law relating to municipal bonds (who may be counsel to the Authority) selected by the Authority and reasonably satisfactory to the Trustee.

**Credit Agreement** means any reimbursement agreement or similar instrument between the Authority (and, if so drafted, the Trustee) and a Credit Provider with respect to a Credit Facility.

**Credit Facility** means a letter of credit, surety bond, liquidity facility, insurance policy or comparable instrument furnished by a Credit Provider which is rated in one of the two highest rating categories by the Rating Agency rating the Bonds with respect to all or a specific portion of one or more Series of Bonds to satisfy in whole or in part the Authority's obligation to maintain a Debt Service Reserve Requirement with respect thereto or to secure (a) the payment of Debt Service (which may include the premium due on payment of a Bond), on Bonds of a specified Series, or a specific portion thereof, (b) the payment of the purchase price (which may include accrued interest to the date of purchase) of Bonds of a specified Series, or a specific portion thereof, on the applicable purchase dates or tender dates, or (c) both the payment of Debt Service and the payment of the purchase price on a specified Series of Bonds, or a specific portion thereof.

**Credit Provider** means the bank, insurance company, financial institution or other entity providing a Credit Facility or Liquidity Facility pursuant to a Credit Agreement.

**Current Interest Bonds** mean all Bonds which are not (a) Capital Appreciation Bonds or (b) prior to the Interest Commencement Date, Deferred Interest Bonds.

**Debt Service** for any period means, as of any date of calculation and with respect to any Series of Bonds then Outstanding, the Bond Service Charges on such series. For purposes of this definition, unless provided to the contrary in an applicable Supplemental Indenture authorizing the issuance of Capital Appreciation Bonds and Deferred Interest Bonds, the scheduled principal and interest portions of the Accreted Value of Capital Appreciation Bonds and the Appreciated Value of Deferred Interest Bonds becoming due at maturity or by virtue of Mandatory Sinking Fund Requirements shall be included in the calculations of accrued and unpaid and accruing interest or principal payments in the year in which such payments are required to be made.

**Debt Service Account** or **Accounts** means the Senior Lien Debt Service Account or the Subordinate Lien Debt Service Account, or, collectively, the Senior Lien Debt Service Account and the Subordinate Lien Debt Service Account, as applicable.

**Debt Service Reserve Account** means the Senior Lien Debt Service Reserve Account or the Subordinate Lien Debt Service Reserve Account established pursuant to the Indenture, as applicable.

**Debt Service Reserve Accounts** means collectively the Senior Lien Debt Service Reserve Account and the Subordinate Lien Debt Service Reserve Account established pursuant to the Indenture.

**Debt Service Reserve Account Credit Facility** means a Credit Facility provided to satisfy all or any portion of a Debt Service Reserve Requirement.

**Debt Service Reserve Account Credit Provider** means the Credit Provider of a Debt Service Reserve Account Credit Facility.

**Debt Service Reserve Requirement** means, as of any date of calculation, the sum of the Debt Service Reserve Requirements applicable to Series of Bonds then Outstanding. The Debt Service Reserve Requirement may be calculated individually for each Series of Bonds or in the aggregate if more than one Series of Bonds are issued at the same time, and as set forth in the applicable Supplemental Indenture. The Debt Service Reserve Requirement may be satisfied by cash, Permitted Investments or a Debt Service Reserve Account Credit Facility, or any combination thereof.

Defeasance Securities means

- (i) direct and general obligations of, or obligations which as to principal and interest are unconditionally guaranteed as to full and timely payment by, the United States of America, to the payment of which the full faith and credit of the United States of America is irrevocably and unconditionally pledged. The obligations described in this paragraph are hereinafter called "United States Government Obligations."
- (ii) pre-refunded municipal obligations meeting the following conditions:
  - (1) the municipal obligations (A) are not subject to redemption prior to maturity or (B) the trustee has been given irrevocable instructions concerning their calling and redemption and the issuer of such municipal obligations has covenanted not to redeem such municipal obligations other than as set forth in such instructions.
  - (2) the municipal obligations are secured by cash or non-callable United States Government Obligations that may be applied only to interest, principal and premium payments of such municipal obligations.
  - (3) the principal of and interest on such United States Government Obligations (plus any cash in the escrow fund) are sufficient to meet the liabilities of the municipal obligations.
  - (4) the cash and United States Government Obligations serving as security for the municipal obligations are held by an escrow agent or trustee.
  - (5) the United States Government Obligations are not available to satisfy any other claims, including those against the trustee or escrow agent.

**Deferred Interest Bonds** means any Bonds as to which accruing interest is not paid prior to the Interest Commencement Date specified in the Supplemental Indenture authorizing such Series.

**Depository** or **DTC** means The Depository Trust Company, New York, New York, and its successors and assigns.

**Diageo Agreement** shall mean the Agreement between Diageo and the Government, dated as of June 17, 2008, as ratified by Act No. 7012 of the Legislature of the Virgin Islands, as the same may be amended and supplemented in accordance with the terms thereof.

**Diageo Incremental Cover Over Revenues** shall mean Matching Fund Revenues payable to or on behalf of Diageo under Article 5 and Section 6.1.6(b)(i),(2)(iv) of the Diageo Agreement.

**Diageo Special Escrow Agent** means The Bank of New York Mellon Trust Company, N.A., the special escrow agent under the Diageo Special Escrow Agreement, or any successor thereto.

**Diageo Project Implementation Agreement** means the Diageo Project Implementation Agreement, by and among the Government, the Authority, Diageo and the Diageo Trustee, dated as of June 1, 2009.

**Diageo Special Escrow Agreement** means the Diageo Special Escrow Agreement by and between the Authority, the Diageo Special Escrow Agent and the Government dated as of the date the Initial Series of Subordinated Revenue Bonds are issued, as the same may be supplemented or amended from time to time.

**Fiduciary** or **Fiduciaries** means any bank or other organization acting in a fiduciary capacity with respect to any Bonds whether as Trustee, Paying Agent, Bond Registrar, tender agent, escrow agent or any or all of them, as may be appropriate.

**First Supplemental Indenture** means the First Supplemental Indenture of Trust between the Authority and the Trustee dated as of May 1, 1998, authorizing the issuance of and securing the Initial Series of Bonds.

**Fiscal Year** means the Authority's fiscal year, which is presently October 1 to the following September 30.

**Fitch** means Fitch Ratings, or any successor thereof which qualifies as a Rating Agency hereunder.

**Fixed Interest Rate Bond** means (i) a Bond, the interest rate on which is established (with no right to vary) at the time of calculation at a single numerical rate for the remaining term of such Bond, or (ii) all of those Bonds of a specific maturity described in clause (2)(A) and (B) of paragraph (i) of the definition of Adjusted Debt Service Requirement.

**Fourth Supplemental Indenture** means the Fourth Supplemental Indenture of Trust, dated as of October 1, 2009, between the Authority and the Trustee, authorizing the issuance of the Series 2009 Bonds.

**Funds** means those funds and accounts specified in the Indenture.

**Government** means the Government of the United States Virgin Islands.

**Indenture** means the Indenture of Trust dated as of May 1, 1998, between the Authority and the Trustee and, as to each Series of Bonds, the Supplemental Indenture pertaining thereto, as the Indenture or any Supplemental Indenture may from time to time be amended or supplemented in accordance with the terms hereof.

**Independent Counsel** means an attorney, or firm thereof, admitted to practice law before the highest court of any state in the United States of America, the United States Virgin Islands or the District of Columbia and not an employee on a full-time basis of either the Authority or the Trustee (but who or which may be regularly retained by any one or more of them).

**Independent Verification Analyst** means a firm retained by the Authority to prepare the certificates required pursuant to the Indenture in connection with the issuance of Additional Senior Lien or Subordinate Lien Bonds.

**Initial Series of Subordinated Revenue Bonds** means the Series 2009A Subordinated Revenue Bonds.

**Initial Series of Bonds** means the Series 1998A, Series 1998B, Series 1998C, Series 1998D and Series 1998E Bonds.

**Interest Commencement Date** means, with respect to any particular Deferred Interest Bonds, the date specified in the applicable Supplemental Indenture authorizing such Deferred Interest Bonds (which date must be prior to the maturity date for such Deferred Interest Bonds), after which interest accruing on such Deferred Interest Bonds shall be payable with the first such payment date being the applicable Interest Payment Date immediately succeeding such Interest Commencement Date.

**Interest Payment Date** means each date specified in a Supplemental Indenture as a date for the payment of interest to Owners of Bonds of a specific Series.

**Interest Payment Period** with respect to any Bond or Series of Bonds, means if prior to the first Interest Payment Date, the period from but not including the date specified in each Supplemental Indenture as the date for commencement of accrual of interest for such Bond or Series and after the first regularly scheduled Interest Payment Date means including a regularly scheduled Interest Payment Date, in each case to the period from but not including the next regularly scheduled Interest Payment Date, provided that any Supplemental Indenture may adjust this definition with respect to any Bond or Series of Bonds authorized to be issued thereunder in order to provide for the proper computation of or the timely transfer of amounts payable with respect to interest borne by such Bond or Series of Bonds on any Interest Payment Date.

**Issue Date** means, for the Bonds of a particular Series, the date on which the Bonds of such Series are delivered against payment therefor.

**Letter of Representation** means the Letter of Representation from the Authority to the Depository in substantially the form set forth in Appendix A to the Indenture, or such form as may be acceptable to the Authority and the Depository.

**Liquidity Facility** means any agreement with a Credit Provider under or pursuant to which it agrees to purchase Optional Tender Bonds provided that the debt obligations of such Credit Provider are rated in one of the two highest Rating Categories by S&P, Moody's or Fitch.

**Loan Agreement** means a loan agreement by and between the Authority and the Borrower, as the same may from time to time be amended or supplemented in accordance with the terms thereof.

**Loan Notes** means with respect to each of the Series of the Bonds, the special limited obligation note in the aggregate principal amount of each of the respective Series of Bonds issued by the Authority for the benefit of the Borrower, each note signed by the Borrower and delivered to the Authority, and collectively, all such Loan Notes.

**Mandatory Sinking Fund Requirements** means the principal amount of Term Bonds which are required to be redeemed by mandatory sinking fund redemption, in the principal amounts at the prices and on the dates as set forth in the applicable Supplemental Indenture.

**Mandatory Tender Date** means a date on which a Series of Bonds, or specific Bonds included in such Series, are required to be purchased by, or on behalf of, the Authority as provided in the Indenture or in the Supplemental Indenture authorizing such Series of Bonds.

**Matching Fund Revenues** means amounts paid to the Special Escrow Agent on behalf of the Government of the Virgin Islands pursuant to Section 28(b) of the Revised Organic Act, 48 U.S.C. §§ 1574-1574c (West 1987), or any successor provisions thereto.

**Moody's** means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Authority, by notice to the Trustee.

**Officer's Certificate** means a certificate signed by an Authorized Officer.

**Optional Tender Bonds** means any Bonds which by their terms may be tendered by and at the option of, or required to be tendered by, the Owner thereof for payment or purchase by the Authority or another party prior to the stated maturity thereof, or the maturities of which may be extended by and at the option of the Owner thereof, provided, however, a Supplemental Indenture may expressly provide that specific Bonds are not "Optional Tender Bonds" if, in the reasonable judgment of the Authority, the tender requirements of such Bonds are not of the character intended to be included within this definition.

**Outstanding Bonds, Bonds Outstanding** and **Bonds then Outstanding** means as of the date of determination, all Bonds theretofore issued and delivered under the Indenture as from time to time supplemented except:

- (i) Bonds theretofore canceled by the Trustee or Paying Agent or delivered to the Trustee or Paying Agent canceled or for cancellation.
- (ii) for which payment or redemption moneys or securities (as provided for in the Indenture) shall have been theretofore deposited with the Trustee or Paying Agent in trust for the Owners of such Bonds; provided, however, that if such Bonds are to be redeemed, notice of such redemption shall have been duly given pursuant to the Indenture or irrevocable action shall have been taken to call such Bonds for redemption at a stated redemption date.
- (iii) Bonds in exchange for or in lieu of which other Bonds shall have been issued and delivered pursuant to the Indenture.

- (iv) Optional Tender Bonds deemed tendered in accordance with the provisions of the Supplemental Indenture authorizing such Bonds on the applicable tender, adjustment or conversion date, if interest thereon shall have been paid through such applicable date and the purchase price thereof shall have been paid or amounts are available for such payments as provided therein (but not if held for reoffering).

In determining requisite percentages of the Owners of aggregate principal amount of Bonds Outstanding for the purposes of direction, consent, approval or waiver under the terms and provisions of the Indenture and any Supplemental Indenture: (1) the aggregate “principal amount” of any Bonds that are Capital Appreciation Bonds shall be determined by their Accreted Value as of the date of such determination, and (2) the aggregate “principal amount” of any Bonds that are Deferred Interest Bonds shall be determined by their Appreciated Value as of the date of such determination and provided, however, that in determining whether the Owners of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the Authority shall be disregarded and deemed not to be Outstanding Bonds, except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Bonds which the Trustee knows to be so owned shall be disregarded.

Each Supplemental Indenture may further specify the conditions under which a Credit Provider will be deemed the Owner of Outstanding Bonds for purposes of consents hereto.

**Owner** or **Bondowner**, or any similar term, means any Person who shall be the registered owner of any Bond or Bonds.

**Participants**, means those broker-dealers, banks and other financial institutions from time to time for which the Depository holds Bonds as securities depository.

**Paying Agent** means any commercial bank or trust company organized under the laws of the United States Virgin Islands, any state of the United States, or the United States of America, or any national banking association designated as paying agent for the Bonds, and its successor or successors hereafter appointed in the manner provided in the Indenture or a Supplemental Indenture.

**Permitted Investments** means any of the following securities, if and to the extent the same are at the time legal for the investment of funds held under the Indenture:

- (i) direct obligations of the United States or obligations guaranteed as to principal and interest by the United States.
- (ii) general obligations of any state, territory, possession or commonwealth of the United States with a rating at the time of purchase in either of the two highest Rating Categories as designated by any Rating Agency.
- (iii) prerefunded obligations of any state, territory, possession or Commonwealth of the United States or political subdivision thereof secured by cash or obligations listed in subsection (i) above, with a rating at the time of purchase in one of the two highest Rating Categories as designated by S&P or any Rating Agency then rating the Bonds.
- (iv) obligations of the Government of the United States Virgin Islands, or obligations guaranteed as to both principal and interest, by the Government of the United States

Virgin Islands with a rating at the time of purchase in one of the two highest Rating Categories as designated by S&P or any Rating Agency.

- (v) obligations issued, or the principal of and interest on which are unconditionally guaranteed, by any agency or instrumentality of or a corporation wholly owned by the United States with a rating at the time of purchase in one of the two highest Rating Categories as designated by any Rating Agency.
- (vi) repurchase agreements with banks, savings and loan associations or trust companies organized under the laws of the United States Virgin Islands, the United States, or any state, territory, possession or commonwealth of the United States, provided, however, that any such bank, savings and loan association or trust company shall have a combined capital and surplus at least equal to \$200,000,000 and further provided that (1) such agreements are fully secured by obligations set forth in (i), (ii), and (iii) above; (2) such collateral is not subject to liens or claims of third parties; (3) such collateral has a market value at least equal to 102% of the amount invested and is held by the Trustee or its agent or, in the case of uncertificated securities, is registered in the name of the Trustee as pledgee; (4) the Trustee has a valid security interest in such collateral, (5) such agreements shall provide that the failure to maintain such collateral at the level required by clause (3) for a period of 10 days will require the Trustee or its agents to liquidate the investments, and (6) shall be rated in one of the two highest Rating Categories as designated by S&P or any Rating Agency then rating the Bonds.
- (vii) investment agreements, guaranteed investment contracts or similar funding agreements issued by insurance companies or other financial institutions; provided that (1) such agreements are fully secured by obligations set forth in (i), (ii) and (iii) above; (2) such collateral is not subject to liens or claims of third parties; (3) such collateral has a market value at least equal to 102% of the amount invested and is held by the Trustee or its agent or, in the case of uncertificated securities, is registered in the name of the Trustee as pledgee; (4) the Trustee has a valid security interest in such collateral; (5) such agreement shall provide that the failure to maintain such collateral at the level required by clause (3) for a period of 10 days will require the Trustee or its agents to liquidate the investments; and (6) such insurance company or financial institution is rated in one of the two highest Rating Categories designated by S&P or any Rating Agency then rating the Bonds.
- (viii) U.S. dollar denominated bankers' acceptances with domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase in the highest short-term rating category by a national rating agency and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank).
- (ix) Certificates of deposit with domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase in the two highest short-term rating categories by S&P or any Rating Agency rating the Bonds and maturing no more than 360 days after the date of purchase. Certificates of deposit will be placed directly with depository institutions and secured by obligations set forth in (i), (ii) and (iii) above; (2) such collateral is not subject to liens of claims of third parties; (3) such collateral has a market value at least equal to (102%) of the amount invested and is held by the Trustee or its agent or, in the case of uncertificated securities, are registered in the name of the Trustee as pledgee; (4) the Trustee has a valid security interest in such collateral and (5) such agreement shall provide that the failure to maintain such collateral at the level



required by clause (3) for a period of 10 days will require the Trustee or its agents to liquidate the investments.

- (x) Investments in a money market fund rated in the two highest rating categories by S&P or any other Rating Agency rating the Bonds including money market funds sponsored by the Authority.
- (xi) Commercial Paper issued by U.S. Corporations which is rated at the time of purchase in the two highest short-term rating category by S&P or any other Rating Agency rating the Bonds and which matures not more than 270 days after the date of purchase.

Any such Permitted Investment may be purchased or sold by, from or through the Authority or the Trustee. The Authority will not direct the Trustee to hold investments described in (vi), (vii) and (viii) unless arrangements satisfactory to the Trustee are in place to verify and monitor compliance with such provisions.

**Person** means an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof, or any other legal entity or groups of legal entities.

**Pledge Agreement** means a Pledge Agreement entered into with respect to a specific Series of Bonds or specific Bond within a Series of Variable Rate Bonds and related to the Credit Facility for such Bonds.

**Pledged Revenue Account** means the fund by that name established pursuant to the Indenture.

**Principal Installment** means, as of any date of calculation and with respect to the Bonds, so long as any Bonds thereof are Outstanding, (i) the principal amount of Bonds due on a certain future date, or (ii) the unsatisfied balance of any Sinking Fund Installments due on a certain future date for the Bonds.

**Principal Payment Date** means any date on which a Principal Installment is scheduled to become due on Bonds whether by scheduled maturity or Mandatory Sinking Fund Requirements or otherwise.

**Proportionate Basis** means, when used with respect to the redemption of Bonds of a specific Series, that the aggregate principal amount of such Bonds of each maturity of such Series to be redeemed shall be determined as nearly as practicable by multiplying the total amount of funds available for redemption by the ratio which the principal amount of Bonds of that Series to be redeemed bears to the principal amount of all Bonds of that Series then Outstanding; provided that if the amount available for redemption of Bonds of any maturity is insufficient to redeem a multiple of the minimum authorized denomination of such maturity, such amount shall be applied to the redemption of the highest possible integral multiple of the minimum authorized denomination of such maturity. For purposes of the foregoing, Term Bonds shall be deemed to mature in the years and in the amounts of the Mandatory Sinking Fund Requirements set forth in the applicable Supplemental Indenture. Any Bonds purchased with moneys which would otherwise be applied to redemption on a Proportionate Basis on the next succeeding Payment Date shall be taken into account in determining Proportionate Basis with respect to such redemption. When used with respect to the purchase of Bonds, Proportionate Basis shall have the same meaning as set forth above, substituting “purchase” for “redemption,” and “purchased” for “redeemed.”

**Purchase Date** means the date on which any Outstanding Bonds are purchased pursuant to the Indenture or any applicable Supplemental Indenture.

**Qualified Swap Agreement** means an agreement between the Authority and a Swap Provider (i) which agreement is either approved by, or following review of such agreement the rating upon all affected Bonds is confirmed by, each Rating Agency then rating the Swap Provider, and (ii) under which the Authority agrees to pay the Swap Provider an amount calculated at an agreed-upon rate or index based upon a notional amount and the Swap Provider agrees to pay the Authority for a specific period of time an amount calculated at an agreed-upon rate or index based upon such notional amount, where the Swap Provider, or the Person who guarantees the obligation of the Swap Provider to make its payments to the Authority, has unsecured obligations rated, as of the date the swap agreement is entered into, in one of the two highest applicable Rating Categories by each Rating Agency then rating such Swap Provider or other Person who guarantees such obligation.

**Rating Agency** means Moody's, S&P and Fitch or any successor or comparable Rating Agency as long as such Rating Agency shall maintain an Outstanding rating on any Series of Bonds.

**Rating Category** means a generic securities rating category, without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise.

**Rebate Account** means the Rebate Account established pursuant to the Indenture and the applicable Supplemental Indenture.

**Rebate Amount Certificate** shall have the meaning set forth in the Fourth Supplemental Indenture.

**Rebate Requirement** means the amount required to be paid to the United States Treasury pursuant to Section 148(f) of the Code.

**Record Date** means with respect to an Interest Payment Date for the Bonds, unless otherwise provided by any Supplemental Indenture, the fifteenth day (or if such day shall not be a Business Day, the preceding Business Day) next preceding such Interest Payment Date.

**Redemption Price** means with respect to any Bond, the principal amount of such Bond plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond, the Indenture or the applicable Supplemental Indenture.

**Related Agreements** or **Related Documents** means any Credit Facility, Credit Agreement or Pledge Agreement related to a Series of Bonds or a specific portion thereof, including security agreements or instruments heretofore or hereafter made for the benefit and with the consent of the Trustee or a Credit Provider as creditor to secure payment of any Series of Bonds or a specific portion thereof or any amount due to a Credit Provider; but excluding the Indenture and all Supplemental Indentures; provided, that the term "Related Agreements" or "Related Documents," when used in relation to a specific Series of Bonds or a specific portion thereof, shall include only such Related Agreements or Related Documents as have been entered into for such Series of Bonds or a specific portion thereof, and shall not include documents, agreements or other items entered into only for the purposes of a different Series of Bonds or a specific portion thereof.

**Remarketing Agent** means the firm appointed as Remarketing Agent for a specific Series of Optional Tender Bonds.

**Remarketing Agreement** means the Remarketing Agreement for a Series of Bonds or a specific portion thereof, including any amendments and supplements thereto, between the Remarketing Agent and the Authority.

**Revenues** means (i) any proceeds and collections from any Loan Notes deposited in the Pledged Revenue Account, including any investment earnings earned thereon, and (ii) any proceeds which arise with respect to any disposition of the Trust Estate.

**S&P** means Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Authority, by notice to the Trustee.

**Second Supplemental Indenture** means the Second Supplemental Indenture of Trust, dated as of December 1, 2004, between the Authority and the Trustee, authorizing the issuance of the Series 2004A Bonds.

**Senior Lien Bonds** means obligations of the Authority issued pursuant to any Supplemental Indenture as Senior Lien Bonds permitted by the Indenture.

**Senior Lien Capitalized Interest Subaccount** means the subaccount by that name in the Senior Lien Debt Service Account established by the Indenture and the applicable Supplemental Indenture.

**Senior Lien Credit Subaccount** means a subaccount by that name in the Senior Lien Debt Service Account or Senior Lien Debt Service Reserve Account, as applicable, established pursuant to the Indenture.

**Senior Lien Debt Service Account** means the fund by the name established pursuant to the Indenture.

**Senior Lien Debt Service Reserve Account** means the fund by that name established pursuant to the Indenture.

**Senior Lien Expense Account** means the Account by that name established pursuant to the Indenture.

**Senior Lien Interest Subaccount** means the Subaccount by that name in the Senior Lien Debt Service Account established pursuant to the Indenture and the applicable Supplemental Indenture.

**Senior Lien Redemption Subaccount** means the subaccount by that name in the Senior Lien Debt Service Account established pursuant to the Indenture.

**Senior Lien Principal Subaccount** means the subaccount by that name in the Senior Lien Debt Service Account established pursuant to the Indenture and the applicable Supplemental Indenture.

**Series** means all Bonds, delivered on original issuance in a simultaneous transaction, regardless of variations in maturity, interest rate, Sinking Fund Installments, or other provisions.

**Series 1998 Bonds** shall mean collectively the Authority's \$541,820,000 Revenue and Refunding Bonds, Series 1998A, Series 1998B, Series 1998C, Series 1998D and Series 1998E, authorized to be issued pursuant to the First Supplemental Indenture.

**Series 1998A Bonds** shall mean the \$289,075,000 Revenue and Refunding Bonds, Series 1998A (Senior Lien Refunding) authorized to be issued pursuant to the First Supplemental Indenture.

**Series 1998B Bonds** shall mean the \$26,015,000 Revenue and Refunding Bonds, Series 1998B (Senior Lien/Refunding/Taxable) authorized to be issued pursuant to the First Supplemental Indenture.

**Series 1998C Bonds** shall mean the \$81,170,000 Revenue and Refunding Bonds, Series 1998C (Senior Lien/Working Capital), authorized to be issued pursuant to the First Supplemental Indenture.

**Series 1998D Bonds** shall mean the \$39,130,000 Revenue and Refunding Bonds Series 1998D (Subordinate Lien/Working Capital), authorized to be issued pursuant to the First Supplemental Indenture.

**Series 1998E Bonds** shall mean the \$106,430,000 Revenue and Refunding Bonds, Series 1998E (Subordinate Lien/Capital Program), authorized to be issued pursuant to the First Supplemental Indenture.

**Series 2004A Bonds** shall mean the Authority's \$94,000,000 Revenue Bonds, Series 2004A, authorized to be issued pursuant to the Second Supplemental Indenture.

**Series 2009 Bonds** shall mean, collectively, the Authority's \$458,840,000 Revenue and Refunding Bonds, Series 2009A, Series 2009B and Series 2009C authorized to be issued pursuant to the Fourth Supplemental Indenture.

**Series 2009A Bonds** shall mean, collectively, the Series 2009A-1 Bonds and the Series 2009A-2 Bonds.

**Series 2009A-1 Bonds** shall mean the \$86,350,000 Revenue and Refunding Bonds, Series 2009A-1 (Senior Lien/Capital Projects/Tax Exempt) authorized to be issued pursuant to the Fourth Supplemental Indenture.

**Series 2009A-2 Bonds** shall mean the \$8,650,000 Revenue and Refunding Bonds, Series 2009A-2 (Senior Lien/Capital Projects/Federally Taxable) authorized to be issued pursuant to the Fourth Supplemental Indenture.

**Series 2009B Bonds** shall mean the \$266,330,000 Revenue and Refunding Bonds, Series 2009B (Senior Lien/Refunding) authorized to be issued pursuant to the Fourth Supplemental Indenture.

**Series 2009C Bonds** shall mean the \$97,510,000 Revenue and Refunding Bonds, Series 2009C (Subordinate Lien/Refunding) authorized to be issued pursuant to the Fourth Supplemental Indenture.

**Series 2009A Construction Subaccount** shall mean collectively, the Series 2009A-1 Construction Subaccount and the Series 2009A-2 Construction Subaccount of the Construction Account established pursuant to the Fourth Supplemental Indenture.

**Series 2009 Cost of Issuance Subaccount** shall mean the Series 2009 Cost of Issuance Subaccount of the Cost of Issuance Account established pursuant to the Fourth Supplemental Indenture.

**Series 2009 Debt Service Reserve Requirement** shall mean an amount equal to the least of (a) the maximum principal and interest due on each Series of the Series 2009 Senior Lien Bonds and on the Series 2009 Subordinate Lien Bonds in the current or any future Fiscal Year, (b) 10% of the original stated principal amount of the Series 2009 Senior Lien Bonds and on the Series 2009 Subordinate Lien

Bonds (or 10% of the issue price of the Series 2009 Senior Lien Bonds and on the Series 2009 Subordinate Lien Bonds if required by the Code) or (c) 125% of the average annual principal and interest due on each Series of the Series 2009 Senior Lien Bonds and on the Series 2009 Subordinate Lien Bonds in the current and each future Fiscal Year.

**Series 2009 Escrow Subaccounts** shall mean, collectively, the Series 2009B Senior Lien Escrow Subaccount of the Senior Lien Redemption Subaccount and the Series 2009C Subordinate Lien Escrow Subaccount of the Subordinate Lien Redemption Subaccount established pursuant to the Fourth Supplemental Indenture.

**Series 2009 Expense Subaccounts** shall mean, collectively, the Series 2009 Senior Lien Expense Subaccount of the Senior Lien Expense Account and the Series 2009 Subordinate Lien Expense Subaccount of the Subordinate Lien Expense Account established pursuant to the Fourth Supplemental Indenture.

**Series 2009 Interest Subaccounts** shall mean, collectively, the Series 2009 Senior Lien Interest Subaccounts of the Senior Lien Interest Subaccount and the Series 2009 Subordinate Lien Interest Subaccount of the Subordinate Lien Interest Subaccount established pursuant to the Fourth Supplemental Indenture.

**Series 2009 Loan Agreement** shall mean the Loan Agreement, dated as of October 1, 2009, by and among the Government, the Authority and the Trustee, entered into in connection with the issuance of the Series 2009 Bonds.

**Series 2009 Loan Notes** shall mean, collectively, the Government's Series 2009A-1 Loan Note, the Series 2009A-2 Loan Note, the Series 2009B Loan Note and the Series 2009C Loan Note in the aggregate principal amount of \$458,840,000.

**Series 2009A Loan Note** shall mean, collectively, the Series 2009A-1 Loan Note and the Series 2009A-2 Loan Note.

**Series 2009A-1 Loan Note** shall mean the Government's Series 2009A-1 Matching Fund Loan Note in the principal amount of \$86,350,000.

**Series 2009A-2 Loan Note** shall mean the Government's Series 2009A-2 Matching Fund Loan Note in the principal amount of \$8,650,000.

**Series 2009B Loan Note** shall mean the Government's Series 2009B Matching Fund Loan Note in the principal amount of \$266,330,000.

**Series 2009C Loan Note** shall mean the Government's Series 2009C Matching Fund Loan Note in the principal amount of \$97,510,000.

**Series 2009 Principal Subaccounts** shall mean, collectively, the Series 2009 Senior Lien Principal Subaccounts of the Senior Lien Principal Subaccount and the Series 2009 Subordinate Lien Principal Subaccount of the Subordinate Lien Principal Subaccount established pursuant to the Fourth Supplemental Indenture.

**Series 2009 Rebate Accounts** shall mean the Rebate Accounts established pursuant to the Fourth Supplemental Indenture.

**Series 2009 Redemption Subaccounts** shall mean the Series 2009 Senior Lien Redemption Subaccounts of the Senior Lien Redemption Subaccount and the Series 2009 Subordinate Lien Redemption Subaccount of the Subordinate Lien Redemption Subaccount established pursuant to the Fourth Supplemental Indenture.

**Series 2009 Senior Lien Bonds** shall mean, collectively, the Series 2009A Bonds and the Series 2009B Bonds.

**Series 2009 Senior Lien Debt Service Reserve Requirement** shall mean for the Series 2009 Senior Lien Bonds an amount equal to the least of (a) the maximum principal and interest due on the Series 2009 Senior Lien Bonds in the current or any future Fiscal Year, (b) 10% of the original stated principal amount of the Series 2009 Senior Lien Bonds (or 10% of the issue price of the Series 2009 Bonds if required by the code) or (c) 125% of the average annual principal and interest due on the Series 2009 Bonds in the current and each future Fiscal Year.

**Series 2009 Senior Lien Debt Service Reserve Subaccounts** shall mean the Series 2009 Senior Lien Debt Service Reserve Subaccounts of the Senior Lien Debt Service Reserve Account established pursuant to the Fourth Supplemental Indenture.

**Series 2009 Subordinate Lien Bonds** shall mean the Series 2009C Bonds.

**Series 2009 Subordinate Lien Debt Service Reserve Requirement** for the Series 2009 Subordinate Lien Bonds shall be an amount equal to the least of (a) the maximum principal and interest due on the Series 2009 Subordinate Lien Bonds in the current or any future Fiscal Year, (b) 10% of the original stated principal amount of the Series 2009 Subordinate Lien Bonds (or 10% of the issue price of the Series 2009 Bonds if required by the Code) or (c) 125% of the average annual principal and interest due on the Series 2009 Bonds in the current and each future Fiscal Year.

**Series 2009 Subordinate Lien Debt Service Reserve Subaccount** shall mean the Series 2009 Subordinate Lien Debt Service Reserve Subaccount of the Subordinate Lien Debt Service Reserve Account established pursuant to the Fourth Supplemental Indenture.

**Sinking Fund Installment** means with respect to any Series of Bonds an amount so designated which is established pursuant to the Supplemental Indenture authorizing such Series of Bonds.

**SLGS** means United States Treasury Obligations, State and Local Government Series, as provided for in the United States Treasury Regulations 31 CFR 344.

**Special Escrow Agent** means The Bank of New York Trust Company, N.A., successor to U.S. Trust Company of New York, the special escrow agent under the Special Escrow Agreement, or any successor thereto.

**Special Escrow Agreement** means the Special Escrow Agreement by and between the Authority, the Special Escrow Agent and the Borrower dated as of the date the Bonds are issued, as the same may be supplemented or amended from time to time.

**Special Escrow Fund** means the Special Escrow Fund established under the Special Escrow Agreement.

**Special Record Date** means if the Authority shall be in default in payment of principal or interest due, a special Record Date for the payment of such defaulted principal or interest established by notice

mailed by the Trustee on behalf of the Authority; notice of such Special Record Date shall be mailed not less than 10 days preceding such Special Record Date, to the owner at the close of business on the fifth Business Day preceding the date of mailing.

**Subordinate Lien Bonds** means obligations of the Authority issued pursuant to any Supplemental Indenture as Subordinate Lien Bonds permitted under the Indenture.

**Subordinate Lien Debt Service Account** means the fund by that name established pursuant to the Indenture.

**Subordinate Lien Debt Service Reserve Account** means the fund by that name established pursuant to the Indenture.

**Subordinate Lien Interest Subaccount** means the subaccount by that name in the Subordinate Lien Debt Service Account established pursuant to the Indenture and the First Supplemental Indenture.

**Subordinate Lien Principal Subaccount** means the subaccount by that name in the Subordinate Lien Debt Service Account established pursuant to the Indenture and the First Supplemental Indenture.

**Subordinate Lien Redemption Subaccount** means the subaccount by that name in the Subordinate Lien Debt Service Account established pursuant to the Indenture.

**Supplemental Indenture** means any indenture amending or supplementing the Indenture in accordance with the terms hereof.

**Surplus Account** means the Surplus Account established pursuant to the Indenture.

**Swap Provider** means the counter party with whom the Authority enters into a Qualified Swap Agreement.

**Taxable Bonds** means Bonds issued pursuant to the Indenture for which the Authority receives, on the date of the closing therefor, an opinion of Bond Counsel to the effect that interest on such Bonds is included in the gross income of the Owners thereof for federal income tax purposes under Section 103 of the Code.

**Tax Covenants** means the covenants of the Authority expressed in or incorporated by reference in the Indenture, or in the corresponding section of a Supplemental Indenture providing for assurance of the preservation of the tax-exempt status of the interest on a Series of Tax-Exempt Bonds.

**Tax-Exempt Bonds** means Bonds issued pursuant to the Indenture for which the Authority receives, on the date of the closing therefor, an opinion of Bond Counsel to the effect that interest on such Bonds is excludable from the gross income of the owners thereof for federal income tax purposes under Section 103 of the Code.

**Tax Opinion** means, with respect to any action requiring such an opinion hereunder, a Counsel's Opinion to the effect that such action, of itself, will not adversely affect the exclusion of interest on any Series of Tax-Exempt Bonds from gross income for Federal income tax purposes.

**Tax Regulatory Agreement** means that agreement between the Authority and the Government of the Virgin Islands dated as of the date the Bonds are issued, as amended from time to time, relating to

the requirements of Sections 148 and 103 of the Code for exemption of interest on Series 2004A Bonds from Federal income tax.

**Term Bonds** means Bonds which are designated in a Supplemental Indenture as subject to scheduled Mandatory Sinking Fund Requirements prior to maturity.

**Treasury Regulations** means all final, temporary or proposed Income Tax Regulations issued or amended with respect to the Code by the Treasury or Internal Revenue Service and applicable to the Bonds. Any reference to a section of the Treasury Regulations shall also refer to any successor provision to such section hereafter promulgated by the Internal Revenue Service pursuant to the Code and applicable to the Bonds.

**Trust Estate** means the Revenues and the rights to receive the same, the tangible and intangible properties, rights and other assets described in the Granting Clauses of the Indenture as from time to time supplemented, and (with respect to a specific Series of Bonds or specific Bonds within a Series) such funds, rights, properties and assets pledged to secure a Series of Bonds or specific Bonds within a Series pursuant to a Supplemental Indenture.

**Trustee** means The Bank of New York Mellon Trust Company, N.A., successor to U.S. Trust Company of New York, a federal banking association duly organized and existing under the laws of the United States, designated as trustee under the Indenture, and its successor or successors hereafter appointed in the manner provided in the Indenture.

**2009 Approved Projects** shall mean the capital projects authorized to be financed with the proceeds of the Series 2009A Bonds pursuant to the Fourth Supplemental Indenture.

**Valuation Date** means with respect to any Bonds that are Capital Appreciation Bonds or Deferred Interest Bonds, the date or dates set forth as such in the Supplemental Indenture authorizing such Bonds on which specific Accreted Values or Appreciated Values, respectively, are assigned to such Bonds.

**Variable Interest Rate** means a variable interest rate or rates to be borne by a Series of Bonds or other obligations or by any Bond within a Series of Bonds. The method of computing such variable interest rate shall be specified in the Supplemental Indenture authorizing such Bonds or Related Agreements approved thereby.

**Variable Rate Bonds** means any Bond that bears interest at a rate which is not established at the time of calculation at a single numerical rate for the remaining term of such bond.

**Written Order** means a written direction of the Authority to the Trustee signed by an Authorized Officer.



**APPENDIX B**

**SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE,  
THE FOURTH SUPPLEMENTAL INDENTURE AND  
THE SPECIAL ESCROW AGREEMENT**

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## SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

The following is a summary of certain provisions of the Indenture. Such summary does not purport to be complete or definitive and reference is made to the Indenture for a full and complete statement of the terms and provisions and for the definition of capitalized terms used in this summary and not otherwise defined under “**Appendix A - Glossary of Certain Defined Terms**”.

**Pledge of Revenues.** The Bonds shall be special, limited obligations of the Authority payable as to principal or Redemption Price, if any, and interest thereon, in accordance with their terms and the terms and provisions of the Indenture solely from Revenues, and secured by a lien on and security interest in the Trust Estate, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture. The Authority has no taxing power and its debts are not debts of the United States Virgin Islands or any political subdivision of the United States Virgin Islands. No holder of the Bonds shall have the right to compel any exercise of the taxing power of the United States Virgin Islands to pay the principal of or interest on the Bonds.

**Authorization of Bonds.** The Indenture authorizes Bonds of the Authority to be issued and designated as “Revenue Bonds (Virgin Islands Matching Fund Loan Notes)” or “Revenue and Refunding Bonds (Virgin Islands Matching Fund Loan Notes),” as applicable. The aggregate principal amount of the Bonds under the Indenture and Supplemental Indenture is not limited except as provided in the Indenture, the Act, or as may be limited by law.

**Sinking Fund Redemption; Purchase.** The Bonds of any Series issued pursuant to the Indenture and a Supplemental Indenture may be subject to optional, mandatory or extraordinary redemption or prepayment on a scheduled or other basis, provided that the Mandatory Sinking Fund Requirements of Bonds of a particular Series and maturity shall be reduced to the extent the Bonds of that Series and maturity have been optionally or mandatorily redeemed prior to or on the date scheduled for payment of the specified principal amount and at the redemption prices specified in the applicable Supplemental Indenture.

**Additional Bonds; Other Revenue Obligations.** All of the Bonds issued under a Supplemental Indenture shall have a lien upon the Trust Estate as provided in the Indenture and shall be prior to any other charge and lien upon the Trust Estate. Except as permitted by the Indenture, no obligations payable from Revenues or secured by a lien on the Trust Estate shall be hereafter issued. If no Event of Default has occurred or will contemporaneously, the Authority may issue Additional Bonds with a Supplemental Indenture.

**Additional Senior Lien Bonds.** (a) Senior Lien Bonds shall be payable from Revenues and secured by a lien on the Trust Estate (except as to any Credit Facility which secures only a specific Series of Bonds or specific Bonds of a Series) on a parity basis with all Outstanding Senior Lien Bonds and any Additional Senior Lien Bonds that may be hereafter issued if the Trustee shall receive:

- (i) a certificate of the Authority that no Event of Default under the Indenture has occurred and shall continue to exist immediately following the date of issuance of the Senior Lien Bonds to be issued; and
- (ii) a certificate of an Independent Verification Analyst stating: (1) (A) the actual amount of Matching Fund Revenues received by the Borrower for its immediately preceding Fiscal Year, (B) the average amount of Matching Fund Revenues received by the Borrower for the immediately preceding three (3) Fiscal Years prior to the issuance of such Additional Senior

Lien Bonds, and (C) the average Matching Fund Revenues projected to be received by the Borrower in the next succeeding two (2) Fiscal Years following issuance of such Additional Senior Lien Bonds; (2) the maximum annual Adjusted Debt Service Requirement in the current or any subsequent Bond Year on Outstanding Senior Lien Bonds after giving effect to the issuance of the proposed Senior Lien Bonds; and (3) (A) that the average Matching Fund Revenues received by the Borrower for the immediately preceding three Fiscal Years prior to the issuance of such Additional Senior Lien Bonds equaled or exceeded one hundred fifty percent (150%) of the amount of maximum Adjusted Debt Service Requirement (including such proposed Additional Bonds) in the current or any subsequent Bond Year, (B) the average Matching Fund Revenues projected to be received by the Borrower for the next succeeding two (2) Fiscal Years following the issuance of the Additional Bonds, without regard to the projected Diageo Incremental Cover Over Revenues, as certified by the Calculation Agent, are equal to or exceed one hundred fifty percent (150%) of the Adjusted Debt Service Requirement in the current or any subsequent Bond Year on Outstanding Senior Lien Bonds and such Additional Senior Lien Bonds, and (C) the average Matching Fund Revenues projected to be received by the Borrower for the next succeeding two (2) Fiscal years following the issuance of the Additional Senior Lien Bonds, without regard to the projected Diageo Incremental Cover Over Revenues, as certified by the Calculation Agent, are equal to or exceed one hundred twenty percent (120%) of the Adjusted Debt Service Requirement in the current or any subsequent Bond Year on Outstanding Senior Lien Bonds, such Additional Senior Lien Bonds and Outstanding Subordinate Lien Bonds.

(b) For purposes of the certifications described in the Indenture, there shall be excluded from the Adjusted Debt Service Requirement any amounts otherwise due or to become due on Outstanding Bonds which are to be refunded and will be no longer Outstanding as a result of the issuance of such Additional Senior Lien Bonds.

(c) Any Supplemental Indenture that authorizes Senior Lien Bonds under this Section shall establish the amount that shall be the Debt Service Reserve Requirement to be funded in connection with such Series of Bonds and may amend the Indenture in order to provide for the funding, application and replenishment of any account within the Senior Lien Debt Service Reserve Account in connection therewith, provided that no such amendment may adversely affect the Bonds of any Series then Outstanding except such Series of Senior Lien Bonds.

(d) If the Senior Lien Bonds are subject to mandatory purchase or are to be purchased upon optional tender by the Owners thereof, any amounts required to be segregated or set aside by the Authority to fulfill its purchase obligation shall be deemed additional Adjusted Debt Service Requirements with respect to the related Series of Senior Lien Bonds in the amounts and at the times such amounts are required to be so set aside.

(e) The conversion of Senior Lien Bonds that are Variable Rate Bonds to Fixed Interest Rate Bonds shall not be treated as the issuance of additional Senior Lien Bonds subject to the other requirements of this Section unless the interest rate to be borne by such Senior Lien Bonds from and after the date of conversion will exceed the Certified Interest Rate taken into account for the purposes of computing Adjusted Debt Service Requirements.

(f) Prior to the issuance of any Series of Senior Lien Bonds under the provisions of this Section, and as a condition precedent thereto, the following documents and showings shall be executed and delivered:

(i) A Supplemental Indenture, executed by the Authority and the Trustee, providing for the issuance of such Senior Lien Bonds and the terms and conditions thereof; and

(ii) An Authority certificate setting forth information sufficient to satisfy the Trustee that the requirements set forth above have been fulfilled.

**Additional Subordinate Lien Bonds.** (a) Additional Subordinate Lien Bonds payable from Matching Fund Revenues and secured by a lien on the Trust Estate on a junior and subordinate basis to the payment obligation to the Senior Lien Bonds may be issued on a parity basis with all Outstanding Subordinate Lien Bonds if the Trustee shall receive:

(i) a certificate of the Authority that no Event of Default under this Indenture has occurred and shall continue to exist immediately following the date of issuance of the additional Subordinate Lien Bonds to be issued; and

(ii) a certificate of an Independent Verification Analyst stating (1) (A) the actual amount of Matching Fund Revenues received by the Borrower for its immediately preceding Fiscal Year, (B) the average amount of Matching Fund Revenues received by the Borrower for its immediately preceding two (2) Fiscal Years prior to the issuance of such Additional Subordinate Lien Bonds, and (C) the average Matching Fund Revenues projected to be received by the Borrower in the next succeeding two (2) Fiscal Years following issuance of such Subordinate Lien Bonds; (ii) the maximum annual Adjusted Debt Service Requirement in the current or any subsequent Bond Year on Outstanding Subordinate Lien Bonds after giving effect to the issuance of the proposed Subordinate Lien Bonds; and (3) (A) that the average Outstanding Matching Fund Revenues received by the Borrower for the immediately preceding three (3) Fiscal Years available after payment of Debt Service on any Outstanding Senior Lien Bonds and any Senior Lien Bonds to be issued simultaneously with such Additional Subordinate Lien Bonds (the "Available Matching Fund Revenues") equaled or exceeded one hundred twenty-five percent (125%) of the amount of the maximum Adjusted Debt Service Requirement in the current or any subsequent Bond Year and (B) the average Available Matching Fund Revenues projected to be received by the Borrower for the next succeeding two (2) Fiscal Years following the issuance of the Additional Subordinate Lien Bonds, without regard to the projected Diageo Incremental Cover Over Revenues, as certified by the Calculation Agent, are equal to or exceed one hundred twenty-five percent (125%) of the Adjusted Debt Service Requirement in the current or any subsequent Bond Year on Outstanding Subordinate Lien Bonds and such Additional Subordinate Lien Bonds, and (C) the average Matching Fund Revenues projected to be received by the Borrower for the next succeeding two (2) Fiscal Years following issuance of the Additional Subordinate Lien Bonds, without regard to the projected Diageo Incremental Cover Over Revenues, as certified by the Calculation Agent, are equal to or exceed one hundred twenty percent (120%) of the Adjusted Debt Service Requirement in the current or any subsequent Bond Year on Outstanding Senior Lien Bonds, Outstanding Subordinate Lien Bonds and such Additional Subordinate Lien Bonds.

(b) For purposes of the certifications described above, there shall be excluded from the Adjusted Debt Service Requirements any amounts otherwise due or to become due on Outstanding Bonds which are to be refunded and will be no longer Outstanding as a result of the issuance of such Additional Subordinate Lien Bonds.

(c) Any Supplemental Indenture which authorizes Additional Subordinate Lien Bonds shall establish the amounts which shall be the Debt Service Reserve Requirement to be funded in connection with such Series of Additional Bonds and may amend the Indenture in order to provide for the funding, application and replenishment of any account within the Subordinate Lien Debt Service Reserve Account in connection therewith, provided that no such amendment may adversely affect the Bonds of any Series then Outstanding except such Series of Additional Subordinate Lien Bonds.

(d) If the Additional Subordinate Lien Bonds are subject to mandatory purchase or are to be purchased upon optional tender by the Owners thereof, any amounts required to be segregated or set aside by the Authority to fulfill its purchase obligation shall be deemed additional Adjusted Debt Service Requirements with respect to the related Series of Subordinate Lien Bonds in the amounts and at the times such amounts are required to be so set aside.

(e) The conversion of Subordinate Lien Bonds which are Variable Rate Bonds to Fixed Interest Rate Bonds shall not be treated as the issuance of additional Subordinate Lien Bonds subject to the other requirements of this Section unless the interest rate to be borne by such Subordinate Lien Bonds from and after the date of conversion will exceed the Certified Interest Rate taken into account for the purposes of computing Adjusted Debt Service Requirements.

(f) Prior to the issuance of any Series of Additional Subordinate Lien Bonds, and as a condition precedent thereto, the following documents and showings shall be executed and delivered:

(i) A Supplemental Indenture, executed by the Authority and the Trustee, providing for the issuance of the Additional Subordinate Lien Bonds and the terms and conditions thereof; and

(ii) An Authority certificate setting forth information sufficient to satisfy the Trustee that the requirements of this Section have been fulfilled.

(g) No Subordinate Lien Bond may be accelerated as long as any Senior Lien Bonds are Outstanding.

**Refunding Bonds.** Additional Bonds may be issued to refund Outstanding Bonds. The Additional Bonds may be on a parity with or subordinate to the Bonds that are being refunded and are not required to satisfy the tests for issuance of Additional Senior Lien Bonds or Additional Subordinate Lien Bonds if the aggregate Debt Service on the Refunding Bonds is equal to or less than aggregate Debt Service on the Refunded Bonds, provided that Additional Senior Lien Bonds issued to refund Outstanding Subordinate Lien Bonds must satisfy the requirements for issuance of Additional Senior Lien Bonds.

**Supplemental Indenture.** A Supplemental Indenture authorizing the issuance of a Series of Bonds may modify the terms of those Bonds and the prescribed form thereof in a manner consistent with the Indenture.

**Credit Facilities.** The Indenture or any Supplemental Indenture does not limit the Authority's right to obtain a Credit Facility for the benefit of the Owners of all or any portion of any Series of Bonds issued hereunder. Each Credit Facility shall be held by the Trustee for the sole and exclusive benefit of the Owners of the Series of Bonds secured by such Credit Facility and not be an asset available for the benefit of the Owners of any other Bonds.

**Book-entry System.** Ownership of one or more fully registered Bonds for each maturity of each Series of Bonds shall be registered in the name of Cede and Company, as nominee for the Depository Trust Company ("DTC"). Payments of interest on, principal of, or any premium on such Series of Bonds shall be made to the account of the DTC on each payment date at the address indicated for the DTC in the Bond Register by transfer of immediately available funds. DTC maintains a book-entry system for recording ownership interests of its Direct Participants, and the ownership interests of a purchaser of a beneficial interest in the Bonds will be recorded through book entries on the records of the Direct Participants. With respect to Bonds registered in the name of DTC, the Authority, the Trustee and any agent thereof shall have no responsibility or obligation to any Direct Participant or to any Beneficial

Owner of such Bonds as specified in the Indenture. DTC may determine to discontinue providing its services with respect to the Bonds of a Series at any time by giving reasonable written notice to the Authority, the Trustee and any tender agent for a Series of Bonds and discharging its responsibilities with respect thereto under applicable law. Additionally, the Authority may terminate, upon provision of notice to the Trustee and any tender agent for a Series of Bonds, the services of the DTC with respect to a Series of Bonds if the continuation of the system of book entry-only transfers is not in the best interests of the Owners of the Bonds of the Series or is burdensome to the Authority. The Authority may select a new Depository or discontinue the services of a Depository and issue Bond certificates.

**General Provisions.** The Bonds shall be in minimum denominations of five thousand dollars (\$5,000), or in integral multiples thereof in the form set forth in the exhibit to the appropriate Supplemental Indenture. The Authority shall execute the Bonds by the manual or facsimile signature of the Governor of the Virgin Islands with the seal or facsimile seal of the Authority and attestation by the manual or facsimile signature of the Secretary of the Authority in accordance with the provisions of the Indenture. The Bonds shall be transferable only upon the books of the Authority by the Trustee. In all cases in which the privilege of exchanging Bonds or transferring registered Bonds is exercised, the Authority shall execute and the Trustee shall authenticate and deliver Bonds in accordance with, and subject to the restrictions of, the Indenture. Neither the Authority nor the Trustee shall be required (a) to transfer or exchange Bonds for a period beginning on the Record Date next preceding an interest payment date for the Bonds and ending on such interest payment date, or for a period of fifteen (15) days next preceding the date (as determined by the Trustee) of any selection of Bonds to be redeemed or thereafter until after the mailing of any notice of redemption; or (b) to transfer or exchange any Bonds called or tendered for redemption, in whole or in part.

**Exchanges and Transfers of Bonds.** The Indenture provides when a Bond is exchanged or transferred, the Authority shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of the Indenture. Bonds surrendered for exchange or transfer shall be canceled by the Trustee. The Authority may only make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer. The Indenture provides specific time periods when the Authority and the Trustee cannot be required to transfer or exchange Bonds.

**Redemption.** Bonds subject to mandatory, optional or extraordinary redemption prior to maturity pursuant to any Supplemental Indenture shall be redeemable, upon notice, at such times, at such Redemption Prices and upon such terms in addition to the terms contained in the Indenture as may be specified in any Supplemental Indenture. At the election or direction of the Authority, the Board shall notify the Trustee of the Authority's decision to redeem and of the particulars of the redemption. If less than all of the Bonds of like maturity of any Series shall be called for prior redemption, the Trustee shall randomly select the particular Bonds or portions of the Bonds to be redeemed.

**Notice of Redemption.** When the Trustee shall receive written notice from the Board, acting on behalf of the Authority, of its election or direction to redeem Bonds pursuant to the Indenture, and when redemption of Bonds is required or authorized pursuant to the Indenture, the Trustee shall give notice, in the name of the Authority, of the redemption of such Bonds, which notice shall specify the Series and maturities of the Bonds to be redeemed, the redemption date and the place or places where amounts due upon such redemption will be payable and, if less than all of the Bonds of any like Series and maturity are to be redeemed, the letters and numbers or other distinguishing marks of such Bonds so to be redeemed, and, in the case of Bonds to be redeemed in part only, such notice shall also specify the respective portions of the principal amount thereof to be redeemed. Such notice shall further state that on such date there shall become due and payable upon each Bond to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Bonds to be redeemed in

part only, together with interest accrued to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable. Such notice shall be mailed by the Trustee by first class mail, postage prepaid, not more than sixty (60) days nor less than thirty-five (35) days before the redemption date, to each of the Owners of any Bonds or portions of Bonds which are to be redeemed, at their last addresses, if any, appearing upon the Bond Register, but any defect in, or the failure of any Bondowner to receive, any such notice shall not affect the validity of the proceedings for the redemption of Bonds. Notwithstanding the foregoing, failure to mail any such notice pursuant to the Indenture to any particular Owner of a Bond shall not affect the validity of any proceedings for the redemption of any other Bond.

**Payment of Redeemed Bonds.** Notice having been given in the manner provided in the Indenture, the Bonds or portions thereof so called for redemption shall become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date, and, upon presentation and surrender thereof at the office specified in such notice, such Bonds or portions thereof shall be paid at the Redemption Price, plus interest accrued and unpaid to the redemption date. If there shall be called for redemption less than all of a Bond, the Authority shall execute and the Trustee shall deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, at the option of the Owner thereof, Bonds of like Series and maturity in any of the authorized denominations. If, on the redemption date, moneys for the redemption of all the Bonds or portions thereof of any like Series and maturity to be redeemed, together with interest to title redemption date, shall be held by the Paying Agent so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date interest on the Bonds or portions thereof of such Series and maturity so called for redemption shall cease to accrue and become payable. If said moneys shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

**Creation of Accounts, and Subaccounts; Deposit of and Use of Moneys.** The proceeds of each Series of Bonds and all Revenues and other sums pledged and assigned by the Indenture to the Trustee for the benefit of Bondholders are to be deposited to the Accounts established by the Indenture and shall not be subject to any lien or attachment by any Creditor of the Authority or any Credit Provider or other person other than the lien of the Indenture. The Accounts and separate Subaccounts within the Accounts created with respect to each series of Bonds under the Indenture shall be held and administered by the Trustee or the Authority in accordance with the terms of the Indenture and may include the following:

- (1) The Pledged Revenue Account, to be held by the Trustee;
- (2) The Senior Lien Debt Service Account, to be held by the Trustee with such separate Subaccounts as provided in the Indenture or Supplemental Indenture, including, any of the following accounts therein:
  - (A) A Senior Lien Interest Subaccount;
  - (B) A Senior Lien Principal Subaccount;
  - (C) A Senior Lien Redemption Subaccount;
  - (D) A Senior Lien Credit Subaccount with respect to each Credit Facility which is not a Debt Service Reserve Account Credit Facility;



- (E) Senior Lien Expense Subaccount;
- (F) Senior Lien Purchase Subaccount;
- (G) Capitalized Interest Subaccount;
- (H) Any other Account or Subaccount established by the applicable Supplemental Indenture.

(3) The Senior Lien Debt Service Reserve Account, to be held by the Trustee, with such separate Series Senior Lien Debt Service Reserve Subaccounts and Senior Lien Credit Subaccounts therein as in any Supplemental Indenture;

(4) The Subordinate Lien Debt Service Account, to be held by the Trustee with such separate Subaccounts therein as provided in the Indenture or Supplemental Indenture creating such Series of Subordinate Lien Bonds, including, applicable accounts therein:

- (A) Subordinate Lien Interest Subaccount;
- (B) Subordinate Lien Principal Subaccount;
- (C) Subordinate Lien Redemption Subaccount;
- (D) A Subordinate Lien Credit Subaccount with respect to each Credit Facility which is not a Debt Service Reserve Account Credit Facility;
- (E) Subordinate Lien Expense Subaccount;
- (F) Subordinate Lien Purchase Subaccount;
- (G) Capitalized Interest Subaccount;
- (H) Any other Account or Subaccount established by the applicable Supplemental Indenture.

(5) The Subordinate Lien Debt Service Reserve Account, to be held by the Trustee, with such separate Series Subordinate Lien Debt Service Reserve Subaccounts and Subordinate Lien Credit Subaccounts therein as the Authority shall determine in any Supplemental Indenture;

(6) The Construction Account, to be held by Trustee or by the Authority with such separate Subaccounts therein as the Authority shall determine in any Supplemental Indenture;

(7) The Cost of Issuance Account and such subaccounts therein as the Authority shall determine in any Supplemental Indenture, to be held by the Trustee; and

(8) A Rebate Account, to be held by the Trustee; and

(9) A Surplus Account, to be held by the Authority.

**Construction Account.** A Construction Account shall be established, which will contain the amounts required by the provisions of the Indenture and each Supplemental Indenture. There also may be paid into the Construction Account, at the option of the Authority, any moneys received by the Authority

from any source unless otherwise required to be applied by the Indenture or any Supplemental Indenture. Segregated Subaccounts may be created within the Construction Account with money held in such Subaccounts separately from other moneys in the Construction Account. Money in the Construction Subaccounts shall be disposed of only in the manner provided in the Supplemental Indentures authorizing such Subaccounts. These separate, segregated Subaccounts and all funds, investments thereof and investment income earned thereon may be pledged (and a lien and security interest therein may be granted) to secure for any period of time the payment of principal of and/or the purchase price of any or all of any Series of Bonds issued pursuant to such Supplemental Indenture. Such pledge, lien and security interest may be prior and superior to the lien and pledge on the Construction Account granted by the Indenture securing the Bonds generally. Moneys in the Construction Account can pay for: (i) the Costs of the Approved Projects, (ii) with respect to special Subaccounts created within the Construction Account by a Supplemental Indenture, all authorized uses stated in such Supplemental Indenture, and (iii) to the extent of shortfalls in a Debt Service Account, the payment of interest on or principal or Redemption price of the Bonds when due.

**Pledged Revenue Account.** There is created a Pledged Revenue Account, held by the Trustee into which the Trustee shall deposit as received from the Special Escrow Agent pursuant to the Escrow Agreement all Matching Fund Revenues received under the Loan Notes and additional amounts designated for deposit into the Pledge Revenue Account by the Indenture or under a Supplemental Indenture. Moneys in the Pledged Revenue Account in the following order of priority shall be transferred annually until there are no Bonds Outstanding under the Indenture.

(i) (1) to each Senior Lien Interest Subaccount;

(A) for Senior Lien Bonds which are Fixed Interest Rate Bonds, an amount that, when combined with amounts on deposit in such Subaccount, equals one hundred percent (100%) of that portion of the Adjusted Debt Service Requirements and constitutes all of the interest accruing or to accrue during the current Bond Year; and

(B) for any Senior Lien Bonds which are not Fixed Interest Rate Bonds, an amount that, when combined with amounts on deposit in such Subaccount, equals one hundred percent (100%) of that portion of the Adjusted Debt Service Requirements and constitutes all of the interest accruing or to accrue for Interest Payment Periods that commence in the current Bond Year;

(2) Subject to any credit in the Senior Lien Capitalized Interest Subaccount to be used for Capitalized Interest and any earnings thereon, to the extent required to be used and available for payment of interest on specific Senior Lien Bonds as contemplated in any applicable Supplemental Indenture and, in connection with paragraph (1) above,

(A) any net payments the Authority is required to make for Qualified Swap Agreements shall have the same claim upon Pledged Revenues as interest on the Series of Senior Lien Bonds to which the Qualified Swap Agreement relates; and

(B) as of each Interest Payment Date for Senior Lien Bonds described in paragraph (i)(1)(B) above, to the extent that the actual interest payable with respect to such Senior Lien Bonds for any Interest Payment Period is less than the amount deposited into the Senior Lien Interest Subaccount, then

the excess amount is a credit to reduce the amount required to be deposited in the next succeeding month or months; and then

(ii) to each Senior Lien Principal Subaccount, an amount that, combined with subaccount deposits, equals one hundred percent (100%) of the principal due on the next succeeding Principal Payment Date on the Series of Senior Lien Bonds payable from such Senior Lien Principal Subaccount; and then

(iii) to each Senior Lien Credit Subaccount, an amount sufficient to pay any principal or interest owed to a Credit Provider under the applicable Supplemental Indenture and Credit Agreement due to a drawing from the related Credit Facility for the principal of or interest or premium on any Senior Lien Bonds if the amount transferred is not greater than the sum of (1) amounts received under the related Credit Facility for payment of amounts to or for the benefit of Owners of Senior Lien Bonds secured by such Credit Facility and (2) interest thereon at the lesser of (A) the rate specified in the Credit Agreement or (B) the applicable rate of interest on the Senior Lien Bond or Bonds paid out of the proceeds of such Credit Facility and provided that such transfer amounts shall be reduced by the amount transferred or required to be transferred under the Indenture or Supplemental Indenture; and then

(iv) to each Senior Lien Redemption Subaccount, the amount of Revenues required to redeem Senior Lien Bonds subject to redemption pursuant to the related Supplemental Indenture; and then

(v) to the Senior Lien Debt Service Reserve Account and ratably to each Subaccount therein (if applicable), the amount required to restore any deficiency in the Senior Lien Debt Service Reserve Account and any Subaccount therein or to pay any amounts owed to a Credit Provider relating to a Senior Lien Debt Service Reserve Account Credit Facility; and then

(vi) to each Senior Lien Expense Subaccount, any amounts then due and owing to the Trustee, any Paying Agent, Remarketing Agent, Bond Registrar, or Credit Provider, Special Escrow Agent or other Fiduciary for Senior Lien Bond Services Charges and Bond Related Costs that relate to administration and remarketing and the Authority's Annual Administrative Fee if not provided for in (i), (ii), (iii) or (iv) above; and then

(vii) to each Rebate Account, the amount for Senior Lien Bonds required by and applied in accord with the Indenture; and then

(viii) (1) to each Subordinate Lien Interest Subaccount,

(A) for Subordinate Lien Bonds which are Fixed Interest Rate Bonds, an amount that, when combined with amounts on deposit in such Subaccount, equal one hundred percent (100%) of the Adjusted Debt Service Requirements and constitutes all of the interest accruing or to accrue for all Interest Payment Periods during the current Bond Year; and

(B) for Subordinate Lien Bonds which are not Fixed Interest Rate Bonds, an amount that, when combined with amounts on deposit in such Subaccount, equals one hundred percent (100%) of that portion of the Adjusted Debt Service Requirements and constitutes all of the interest accruing or to accrue for Interest Payment Periods that commence in the current Bond Year, subject to the credits provided for in clause (2) below;

(2) Subject to any credit in the Subordinate Lien Capitalized Interest Subaccount to be used for Capitalized Interest and any earnings thereon, to the extent required to be used and available for payment of interest on specific Subordinate Lien Bonds as contemplated in any applicable Supplemental Indenture and, in connection with paragraph (1) above

(A) any net payment the Authority is required to make for Qualified Swap Agreements shall have, the same claim upon Revenues as interest on the Series of Subordinate Lien Bonds to which the Qualified Swap Agreement relates; and

(B) as of each Interest Payment Date for Subordinate Lien Bonds which are described in paragraph (ix)(1)(B) above, to the extent that the actual interest payable with respect to such Subordinate Lien Bonds in any Interest Payment Period is less than the amount deposited into the Subordinate Lien Interest Subaccount, then the excess amount is a credit to reduce the amount otherwise required to be deposited; and then

(ix) to each Subordinate Lien Principal Subaccount, an amount that, combined with Subaccount deposits, equal one hundred percent (100%) of the principal due on the next succeeding Principal Payment Date on the Series of Subordinate Lien Bonds payable from such Subordinate Lien Principal Subaccount; and then

(x) to each Subordinate Lien Credit Subaccount, an amount sufficient to pay any principal or interest then owing to a Credit Provider under the applicable Supplemental Indenture and Credit Agreement due to drawing from the related Credit Facility for the principal of or interest or premium on any Subordinate Lien Bonds if the amount transferred is not greater than the sum of (1) amounts received under the related Credit Facility for payment of amounts to or for the benefit of Owners of Subordinate Lien Bonds secured by such Credit Facility and (2) interest thereon at the lesser of (A) the rate specified in the Credit Agreement or (B) the applicable rate of interest on the Subordinate Lien Bond or Bonds paid out of the proceeds of such Credit Facility and provided that such transfers shall be reduced by the amounts required to be transferred under the Indenture or Supplemental Indenture; and then

(xi) to each Subordinate Lien Redemption Subaccount, the amount of Revenues required to redeem Subordinate Lien Bonds subject to redemption pursuant to the related Supplemental Indenture; and then

(xii) to the Subordinate Lien Debt Service Reserve Account and ratably to each Subaccount therein (if applicable), the amount required to restore any deficiency in the Subordinate Lien Debt Service Reserve Account and any Subaccount therein or to pay any amounts then owed to a Credit Provider relating to a Subordinate Lien Debt Service Reserve Account Credit Facility; and then

(xiii) to each Subordinate Lien Expense Subaccount, any amounts then owed to the Trustee, any Paying Agent, Remarketing Agent, Bond Registrar, Credit Provider, Special Escrow Agent or other Fiduciary for Subordinate Lien Bond Service Charges and Bond Related Costs that relate to administration and remarketing and the Authority's Annual Administrative Fee if not provided for in (ix), (x), (xi), (xii) above and (xiii); and then

(xiv) to each Rebate Account for Subordinate Lien Bonds, the amount and the application required by the Indenture; and then

(xv) except as may be provided in one of more Supplemental Indentures to the contrary, to the Surplus Account.

Solely for the purpose of administering these payments, any interest payable on Capital Appreciation Bonds or, prior to the Interest Commencement Date, on Deferred Interest Bonds, shall be deemed to be “due” in the Bond Year when payment is scheduled to be made and to be “principal” for (a)(ii) and (x) above rather than “interest” under paragraphs (i) and (ix) above.

**Costs of Issuance Account.** The Trustee may establish within the Cost of Issuance Account a separate, segregated account for the benefit of one or more Series of Bonds as provided in the applicable Supplemental Indenture. There shall be deposited in the Cost of Issuance Account, from the proceeds of each Series of Bonds, the amount specified pursuant to the Supplemental Indenture creating such account. Costs of Issuance Fund moneys shall be used only to pay Costs of Issuance of a Series of Bonds. The Trustee shall disburse from the Cost of Issuance Account all amounts required to pay the Costs of Issuance then due and payable. Any moneys remaining in the Costs of Issuance Fund with respect to any Series of Bonds shall be transferred by the Trustee to the related subaccount in the Construction Account. The Authority may, however, certify and direct the Trustee by the one hundred eightieth (180th) day to retain moneys in the Cost of Issuance Account or direct transfer to a person or Account other than the Construction Account or related Account if the moneys are not derived from the proceeds of the applicable Series of Bonds.

**Debt Service Accounts and Subaccounts.** The Indenture establishes a Senior Lien Debt Service Account and a Subordinate Lien Debt Service Account (collectively, the “Debt Service Accounts”) and various subaccounts within the Debt Service Accounts. Upon issuance of any Series of Bonds, the Trustee shall deposit to the applicable Interest Subaccount amounts from the proceeds of each Series of Bonds equal to accrued interest received from the sale of such Bonds. Amounts on deposit in the Interest Subaccount shall be used to pay interest for the respective Series of Bonds on each Interest Payment Date. If on any Interest Payment Date amounts on deposit in the applicable Interest Subaccount are insufficient to pay the amount of interest coming due on the applicable Series of Bonds, the Trustee shall transfer to the Interest Subaccount amounts from, respectively, the Pledged Revenue Account, the Redemption Subaccounts, the Construction Accounts, the respective Series Debt Service Reserve Account or the Principal Subaccount.

The Trustee shall transfer on the first day of each Bond Year amounts from the Pledged Revenue Account to each Principal Subaccount and use such amounts on each Principal Payment Date to pay principal due on each respective Series of Bonds. If on such Principal Payment Date amounts on deposit in each respective Principal Subaccount are insufficient to pay principal coming due on the applicable Series of Bonds on the Principal Payment Date, the Trustee shall transfer to the Principal Subaccount amounts from, respectively, the Pledged Revenue Account, the Redemption Subaccounts, the Construction Account, the respective Series Debt Service Reserve Account or the Interest Subaccount.

Amounts to be used by the Authority to prepay any Series of Bonds shall be deposited into the respective Series Redemption Subaccount and applied to purchase Bonds to be surrendered to the Trustee as a credit against Debt Service Requirements when due or to pay principal of and premium, if any, of a Series of Bonds subject to and called for redemption. Any funds transferred to a Redemption Subaccount from the Construction Account as excess proceeds shall be applied only to redeem Bonds of the Series from which such Construction Account proceeds were derived.

The Trustee shall transfer moneys from the Pledged Revenue Account to the respective Expense Subaccounts for each Series of Bonds and use such amounts to pay at the direction of the Authority to any payee amounts specified, including the Authority's Annual Administrative Fee.

Amounts in the respective Purchase Subaccounts, if any, shall be used as directed in the applicable Supplemental Indenture to purchase the related Series of Bonds.

If required by an applicable Supplemental Indenture, the Trustee shall create a Credit Subaccount for a Series of Bonds that are secured by a Credit Facility. Amounts drawn under such Credit Facility to pay principal or interest shall be deposited into the related Principal Subaccount or Interest Subaccount or Purchase Subaccount and applied to the purpose for which they were drawn.

Amounts on deposit in each respective Capitalized Interest Subaccount shall be transferred on each Interest Payment Date and shall be credited against the transfer then due from the Pledged Revenue Account.

**Deficiencies in the Interest Subaccounts or Principal Subaccounts.** In the event, the amount on deposit at a payment date in the Interest Subaccount or the Principal Subaccount is not sufficient to pay the full interest on or principal of all Outstanding Bonds of any Series then due, the Authority shall immediately cure such insufficiency with a draw from the Surplus Subaccount. If amounts available in the Surplus are insufficient, the Trustee shall transfer to the respective Interest Subaccount or Principal Subaccount an amount equal to the deficiency in following order:

- (i) the Pledged Revenue Account;
- (ii) the Senior Lien Redemption Subaccount or any Subordinate Lien Redemption Subaccount (other than amounts held therein to pay and redeem Bonds for which notice of redemption has theretofore been given, and amounts held therein to defease Outstanding Bonds);
- (iii) the Construction Account (to the extent held by the Trustee and such application is permitted by the Supplemental Indenture governing same and the Authority certifies that such amounts are not required for payment of costs of an Approved Project);
- (iv) the Series Subaccount of the Senior Lien Debt Service Reserve Account if the payment is for principal of or interest on the related Series of Bonds;
- (v) the Senior Lien Principal Subaccount (for deficiencies in the Interest Subaccount); and
- (vi) the Senior Lien Interest Subaccount (for deficiencies in the Principal Subaccount).

Deficiencies in the Senior Lien Interest Subaccount shall be fully cured prior to curing any deficiency in the Senior Lien Principal Subaccount.

**Debt Service Reserve Accounts.** The Trustee shall initially deposit to the credit of the Series Subaccount of the Debt Service Reserve Account from the proceeds of each Series of Bonds in an amount equal to the Debt Service Reserve Requirement (if any) for that Series. Thereafter each Series Subaccount of the Debt Service Reserve Account shall be maintained at the Debt Service Reserve Requirement for the related Series by transfers to the Debt Service Reserve Account from the Pledged Revenue Account. If, however, the deposit in a Series Subaccount of the Debt Service Reserve Account

is less than the Debt Service Reserve Requirement for the related Series, the Authority shall be required to restore the deficiency. The Authority shall transfer any amounts on deposit in the Surplus Account and, to the extent the full deficiency cannot be so cured, such amounts shall be applied ratably to each Series Subaccount within the Debt Service Reserve Account which has a deficiency. To the extent any deficiency remains, transfers shall be made pursuant to the process in “**Deficiencies in the Interest Subaccount or Principal Subaccount**” above. Deficiencies caused by a valuation of the investment securities shall be cured no later than the first day of the Bond Year following the determination that such vacancy exists.

If on any Interest Payment Date or Principal Payment Date there are not sufficient amounts in any Interest Subaccount or Principal Subaccount to pay interest or principal coming due after the transfers required under the Indenture, the Trustee shall transfer from the Debt Service Reserve Account to the Interest Subaccount or Principal Subaccount, as the case may be, amounts sufficient to make up any deficiency. The Trustee may not draw on any Debt Service Reserve Credit Facility until all cash and any investment Securities in the related Debt Service Reserve Account have been liquidated.

If the Debt Service Reserve Requirement is to be satisfied pursuant to any Supplemental Indenture with a Credit Facility the Trustee shall create a Debt Service Reserve account to such Credit Facility and shall deposit into such account all amounts drawn under the related Credit Facility.

All income derived from investment of amounts on deposit in the Debt Service Reserve Fund shall be retained therein if the amounts on deposit in such Debt Service Reserve Fund is less than the Debt Service Reserve Requirement; otherwise such earnings shall be transferred to the respective Debt Service Accounts and Subaccounts if necessary to pay any deficiency and then at the written direction of the Authority to the Rebate Account or the Surplus Account.

**Rebate Account.** Moneys on deposit in the Rebate Account are not subject to the lien or pledge of the Indenture. If amounts in the Rebate Account are in excess of the Rebate Amount, such excess amounts shall be transferred to the Pledged Revenue Account. If amounts on deposit in the Rebate Account are insufficient to make payments required under the Indenture, the Authority shall transfer to the Trustee within five (5) Business Days, the amount of such deficiency.

**Surplus Account.** Moneys held in the Surplus Account may be used for transfers to the Debt Service Accounts and Debt Service Reserve Accounts to maintain required balances therein, for transfers to the Construction Account or Subaccount to pay costs of Approved Projects or for any other lawful purpose as directed by the Authority.

**Pro Rata Payments.** In the event the amount then on deposit in the Senior Lien Interest Subaccount or Principal Subaccount or in the Subordinate Lien Interest Subaccount or Principal Subaccount on an Interest Payment Date or Principal Payment Date is not sufficient to pay the full amount of interest on and principal of all Outstanding Senior Lien Bonds then due and such deficiency cannot be cured as provided in the Indenture, the Trustee shall nonetheless pay out all moneys on deposit in the Senior Lien Interest Subaccount and Senior Lien Principal Subaccount to the persons entitled thereto, pro rata according to the amount owed to each and pay out all moneys on deposit in the Subordinate Lien Interest Subaccount and Subordinate Lien Principal Subaccount to the persons entitled thereto, pro rata according to the amount owed to each. These pro rata payments are subject to provisions as to Credit Facilities or other amounts which a Supplemental Indenture may pledge or otherwise provide.

**Investments.** If there are Bonds Outstanding and no Event of Default has occurred or is continuing, an Authorized Officer may invest moneys on deposit to the credit of the Construction Account, Pledged Revenue Account, any Debt Service Account, and any Debt Service Reserve Account.

**Transfer.** At the option of any Owner, Bonds may be exchanged for an equal aggregate principal amount of Bonds of other minimum denominations, or multiples thereof, of the same series and maturity upon surrender of such Bonds at the Principal Office of the Registrar duly executed by the Owner or his duly authorized attorney, and upon payment of the charges of the Registrar and the Authenticating Agent or the Trustee for exchange. Neither the Authority nor the Trustee shall be required to transfer or exchange (i) Bonds for a period beginning on the Record Date next preceding an interest payment date and ending on such interest payment date, or for a period of fifteen (15) days next preceding the date determined by the Trustee or any selection of Bonds to be redeemed or thereafter until after the mailing of any notice of redemption or (ii) Bonds called or tendered for redemption, in whole or in part.

**Additional Bonds and Other Revenue Obligations.** The Authority may issue one or more series of Additional Bonds in accordance with the conditions of the Indenture and the Loan Agreement and lend the proceeds thereof to the Government pursuant to the Loan Agreement to provide funds for the Cost of undertaking or completing a Project or the Cost of refunding all or a portion of the Outstanding Bonds of any one or more series or of any Long-Term Indebtedness other than Bonds. Except as permitted under the restriction on Additional Senior Lien Bonds and Additional Subordinate Lien Bonds, no obligations payable from the Revenues or secured by a lien on the Trust Estate (except as to any Credit Facility or Liquidity Facility which secures Bonds or a specific Series of Bonds) may be issued.

**Events of Default.** Each of the listed events shall constitute an “Event of Default,” provided that no Event of Default with respect to any Subordinated Lien Bonds shall cause an Event of Default on any Senior Lien Bonds, as set out in the Indenture and as follows:

(a) payment of interest on any Series of Bonds shall not be made when the same shall become due and payable; or

(b) payment of the principal or Redemption Price of any Series of Bonds or of a Sinking Fund Installment shall not be made when the same shall become due and payable; or

(c) the Authority shall fail to observe or perform in any material way any covenant, condition, agreement or provision contained in any Bonds or in the Indenture or any Supplemental Indenture on the part of the Authority to be performed other than those set forth in the Indenture, and such failure shall continue for thirty (30) days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Authority by the Trustee, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of the Owners of not less than twenty-five percent (25%) in principal amount of any Outstanding Bonds; provided, however, that if said default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Authority within the applicable period and diligently pursued until the default is corrected and an Authorized Officer of the Authority has delivered to the Trustee a certificate to that effect; or

(d) an “Event of Default” as such term is defined in any Loan Agreement; or

(e) the occurrence of an Act of Bankruptcy by the Authority.

Provided however, that in no event shall an Event of Default with respect to any Subordinate Lien Bonds cause an Event of Default on any Senior Lien Bonds.

**Rights of Owners.** Anything in the Indenture to the contrary notwithstanding, subject to the limitations and restrictions as to the rights of the Owners set forth in the Indenture, upon the happening and continuance of any Event of Default, the Owners of not less than twenty-five percent (25%) in



principal amount of any Series of Bonds then Outstanding shall have the right upon providing the Trustee security and indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee under the Indenture. The Trustee may refuse to follow any direction that conflicts with law, the Indenture or any Supplemental Indenture or would subject the Trustee to personal liability without adequate indemnification therefor.

**Restriction on Action by Owners.** No Owner of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of any trust under the Indenture, or any other remedy under the Indenture or on said Bonds, unless such Owner previously shall have given to the Trustee written notice of an Event of Default and unless the Owners of not less than twenty-five percent (25%) in principal amount of any Series of Bonds then Outstanding shall have made written request of the Trustee to institute any such suit, action, proceeding or other remedy. After the right to exercise such powers or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers in the Indenture granted, or to institute such action, suit or proceeding in its or their name; nor unless there also shall have been offered to the Trustee security and indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the trusts of the Indenture or for another remedy under the Indenture or Supplemental Indenture; it being understood and intended that no one or more Owners of any Series of Bonds secured by the Indenture shall have any right in any manner whatever by his or their action to affect the security of the Indenture, or to enforce any right under the Indenture or under the Bonds and that all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of Outstanding Bonds, subject to the provisions of the Indenture and any Supplemental Indenture.

**Waiver of Events of Default; Effect of Waiver.** The Trustee may waive any Event of Default hereunder and its consequences and shall do so upon the written request of the Owners of at least a majority in principal amount of all Outstanding Bonds, provided, however, that there shall not be waived (i) any event of default pertaining to the payment of the principal of any Bond at its maturity date or redemption date prior to maturity, or (ii) any event of default pertaining to the payment when due of the interest on any Bond, unless prior to such waiver or rescission, all arrears of principal (due otherwise than by declaration) and interest, with interest (to the extent permitted by law) at the rate per annum borne by the Bonds in respect of which such event of default shall have occurred on overdue installments of interest, and all arrears of payments of principal when due, as the case may be, and all expenses of the Trustee in connection with such event of default, shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such event of default shall be discontinued or abandoned or determined adversely, then and in every such case the Authority, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder.

**Priority of Payment.** All Senior Lien Bonds issued under and secured by the Indenture shall be equally and ratably secured by and payable from the Senior Lien Debt Service Account without priority of one Senior Lien Bond over any other, except as otherwise expressly provided (i) in the Indenture with respect to Senior Lien Bonds of a specific Series (or specific Senior Lien Bonds within a Series) secured by a Credit Facility or (ii) in a Supplemental Indenture, or (iii) with respect to moneys or assets whether or not held in the Senior Lien Debt Service Account pledged to secure one or more Series of Senior Lien Bonds (or specific Senior Lien Bonds within a Series) and not other Bonds. All Subordinate Lien Bonds issued under and secured by the Indenture shall be equally and ratably secured by and payable from the

Subordinate Lien Debt Service Account without priority of one Subordinate Lien Bond over any other except as otherwise expressly provided (i) in the Indenture with respect to Subordinate Lien Bonds of a specific Series (or specific Subordinate Lien Bonds within a series) secured by a Credit Facility or (ii) in a Supplemental Indenture or (iii) with respect to moneys or assets whether or not held in the Subordinate Lien Debt Service Account pledged to secure one or more Series of Subordinate Lien Bonds (or specific Subordinate Lien Bonds within a Series) and not other Bonds. Upon the occurrence of an Event of Default, all moneys collected pursuant to action taken pursuant to the Trustees' or Bondowners' remedies hereunder after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee and after any other prior application of such moneys has been made as is required by law shall be deposited in such Account or Accounts described in the Indenture as the Trustee deems appropriate; and all moneys in the Debt Service Accounts (and at the discretion of the Trustee except when otherwise required), excluding however (1) any moneys held in trust for the payment of any Bonds or interest thereon which have matured or otherwise become payable prior to such Event of Default, (2) any moneys (such as Credit Facility proceeds) pledged exclusively to secure one or more specific Series of Bonds (or specific Bonds within a Series) shall be applied as provided as follows and (3) moneys in the Senior Lien Debt Service Account and Senior Lien Debt Service Reserve Account shall be applied solely to payment of Senior Lien Bonds and money in the Subordinate Lien Debt Service Account and Subordinate Lien Debt Service Reserve Account shall be applied solely to payment of Subordinate Lien Bonds.

**Application of Moneys.** Unless the principal of Bonds shall have become due and payable, all such moneys in the respective Accounts and Subaccounts securing such obligations shall be applied consistent with the respective priorities of liens and the respective purposes for such accounts each as follows:

**FIRST:** To the payment of installments of interest then due on the Senior Lien Bonds in the order of the maturity of the installments of such interest, and if available amounts are insufficient to pay in full any particular installment, then to the payment ratably, according to amounts due and without discrimination or privilege; and

**SECOND:** To the payment of the unpaid principal of and redemption premium, if any, on any of the Senior Lien Bonds which shall have become due (other than Senior Lien Bonds which have matured or otherwise become payable prior to such Event of Default and Moneys for the payment of which are held in trust, in the order of their due dates, and if the available amounts are insufficient to pay in full the unpaid principal and redemption premium, then to the payment ratably according to amounts due without discrimination or privilege; and

**THIRD:** To the payment of interest on and the principal of the Senior Lien Bonds as thereafter may from time to time become due, all in accordance with the provisions of the Indenture; and

**FOURTH:** To the payment of all installments of interest then due on the Subordinate Lien Bonds in the order of the maturity of the installments of such interest, and if the available amounts are insufficient to pay in full any particular installment, then to the payment ratably according to amounts due without discrimination or privilege; and

**FIFTH:** To the payment of unpaid principal of and redemption premium, if any on any of the Subordinate Lien Bonds due, which shall have become due other than Subordinate Lien Bonds, which may have matured or otherwise become payable prior to such Event of Default and moneys for the payment of which are held in trust, in the order of their due dates, and if the amount available shall not be sufficient to pay in full the unpaid principal and redemption premium, if any, on Subordinate Lien Bonds due, then to the payment ratably according to amounts due and without discrimination or privilege; and

**SIXTH:** To the payment of interest and premium, if any, on and the principal of the Subordinate Lien Bonds and to the redemption of such Subordinate Lien Bonds, as thereafter may from time to time become due all in accordance with the provisions of the Indenture; and

**SEVENTH:** To reimburse the Trustee for costs and expenses described in the first unnumbered paragraph of this Section and not reimbursed thereunder.

**Duties, Immunities and Liabilities of Trustee.** The Trustee shall, prior to an Event of Default, and after the curing of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in the Indenture and no implied duties or obligations shall be read into the Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured), exercise such of the rights and powers vested in it by the Indenture, and use the same degree of care and skill in their exercise as a prudent individual would exercise or use under the circumstances in the conduct of his own affairs.

The Trustee is not required to risk or expend its own funds or otherwise incur any financial liability in the performance of any of its duties if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it.

In accepting the trust created by the Indenture, the Trustee acts solely as Trustee for the Owners and not in its individual capacity.

The Trustee makes no representation or warranty, express or implied, as to the compliance with legal requirements of the use contemplated by the Authority of the funds under the Indenture or any Supplemental Indenture. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Indenture or Supplemental Indenture.

The Trustee shall not be responsible for the sufficiency, timeliness or enforceability of the remedies. The Trustee shall have no responsibility in respect of the validity or sufficiency of the Indenture or any Supplemental Indenture or the security provided hereunder or the due execution hereof by the Authority, or the due execution of any other document by any party (other than the Trustee) thereto, or in respect of the validity of any Bonds authenticated and delivered by the Trustee in accordance with this Indenture or to see to the recording or filing (but not refile) of the Indenture, any Supplemental Indenture or any financing statement or any other document or instrument whatsoever.

The Trustee shall not be deemed to have knowledge of any Event of Default under the Indenture unless and until an officer of its corporate trust department shall have actual knowledge thereof.

The Trustee shall not be liable or responsible because of the failure of the Authority to perform any act required of it by the Indenture or any Supplemental Indenture or because of the loss of any moneys arising through the insolvency or the act or default or omission of any depository other than itself in which such moneys shall have been deposited under the Indenture or any Supplemental Indenture. The Trustee shall not be responsible for the application of any of the proceeds of the Bonds or any other moneys deposited with it and paid out, invested, withdrawn or transferred in accordance herewith or for any loss resulting from any such investment. The Trustee shall not be liable in connection with the performance of its duties under the Indenture except for its own misconduct negligence or bad faith.

The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Bonds relating to the time, method and place of conducting any proceeding for any remedy

available to the Trustee or any trust or power conferred upon the Trustee under the Indenture or any Supplemental Indenture.

**Removal, Resignation of Trustee, Successor Trustee.** The Authority in its sole discretion may remove the Trustee without cause at any time if no Event of Default has occurred and is continuing and shall remove the Trustee if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or if at any time the Trustee shall cease to be eligible or shall become incapable of acting, or shall commence a case under any bankruptcy, insolvency or similar law, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take control or charge of the Trustee or its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee, and thereupon shall appoint a successor Trustee by an instrument in writing.

The Trustee may resign by giving written notice of such resignation to the Authority and by giving notice of such resignation by mail, first class postage prepaid, to the Owners at the addresses listed in the Bond Register. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee by an instrument in writing.

Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and shall have accepted appointment within forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee, or any Owner (on behalf of himself and all other Owners) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under the Indenture shall signify its acceptance of such appointment by executing and delivering to the Authority and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless, at the written request of the Authority or of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such as may reasonably be required for more fully and certainly vesting and confirming to other things as such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon acceptance of appointment by a successor Trustee as provided in this subsection, such successor Trustee shall mail a notice of the succession of such Trustee to the trusts hereunder by first class mail, postage prepaid, to each Paying Agent and to the Owners at their addresses listed in the Bond Register.

Any Trustee appointed shall be a trust company or bank having the powers of a trust company, having a corporate trust office in the United States, having a combined capital and surplus of at least one hundred million dollars (\$100,000,000), and subject to supervision or examination by federal or state authority.

**Merger or Consolidation of Trustee.** Any company into which the Trustee or any Paying Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee or any Paying Agent may sell or transfer all or substantially all of its corporate trust business provided such company shall be eligible under the Indenture, may succeed to the rights and obligations of such Trustee or Paying Agent, as the case may be, without the execution or filing of any paper or any further

act, anything herein to the contrary notwithstanding; provided that upon the sale or transfer of corporate trust business as a result of such merger or consolidation, so long as no Event of Default has occurred and is continuing, the Authority may by an instrument in writing appoint a successor Trustee or Paying Agent other than the company resulting from such merger, conversion or consolidation by the Trustee or the Paying Agent.

**Liability of Fiduciaries.** Facts in the Indenture, in any Supplemental Indenture and in the Bonds shall be taken as statements of the Authority, and neither the Trustee nor any Paying Agent assumes any responsibility for the correctness or makes any representations as to the validity or sufficiency of the Indenture, any Supplemental Indenture or of the Bonds other than in connection with the duties or obligations therein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. Neither the Trustee nor any Paying Agent shall be liable in connection with the performance of its duties under the Indenture, except for its own negligence or default. The Trustee or any Paying Agent may become the Owner of Bonds with the same rights they would have if they were not Trustee or Paying Agent, respectively, and, to the extent permitted by law, may act as depository for and permit any of their officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

**No Recourse on the Bonds.** No recourse shall be had for the payment of the principal of or interest on the Bonds or for any claim based thereon or on the Indenture against any member or officer of the Authority or any person executing the Bonds and no such member, officer or person shall be liable personally on the Bonds.

**Right to Indemnification.** The Trustee shall be under no obligation to institute any suit, or to take any remedial proceeding under the Indenture, or to enter any appearance in or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction against any and all reasonable costs and expenses, outlays, and counsel fees and other disbursements, and against all liability not due to its willful misconduct, negligence or bad faith.

**Supplemental Indenture Without Consent of Bondowners.** For any one or more of the following purposes and at any time or from time to time, a Supplemental Indenture of the Authority may be entered into, which, without the requirement of consent of Bondowners, shall be fully effective in accordance with its terms:

(a) To provide for the issuance of a Series of Bonds and to prescribe the terms and conditions pursuant to which the same may be issued, paid or redeemed; provided, however, that such Supplemental Indenture shall not conflict with the Indenture as theretofore in effect;

(b) To add to the covenants and agreements of the Authority in the Indenture, other covenants and agreements to be observed by the Authority which are not contrary to or inconsistent with the Indenture as theretofore in effect;

(c) To add to the limitations and restrictions in the Indenture, other limitations and restrictions to be observed by the Authority which are not contrary to or inconsistent with the Indenture as theretofore in effect;

(d) To confirm, as further assurances, any pledge under, and the subjection to any lien or pledge created or to be created by, the Indenture, of any moneys, securities or fund, or to establish any additional funds or accounts to be held under the Indenture;

(e) To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in the Indenture;

(f) To insert such provisions clarifying matters or questions arising under the Indenture as are necessary or desirable and are not contrary to or inconsistent with the Indenture as theretofore in effect;

(g) To modify the Indenture or the Bonds to permit qualification under the Trust Indenture Act of 1939 or any similar Federal statute at the time in effect, or to permit the qualification of the Bonds for sale under the securities laws of any state of the United States;

(h) To make such changes as may be necessary to obtain an investment grade rating or to maintain or upgrade any rating for all or any Series of Bonds by a Rating Agency;

(i) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Owners or the Trustee;

(j) To subject to the lien and pledge of the Indenture additional revenue, properties or collateral;

(k) To evidence the appointment of a separate trustee or a co-trustee or the successor of a Trustee and/or Paying Agent hereunder;

(l) To modify, eliminate and/or add to the provisions of the Indenture to such extent as shall be necessary to prevent any interest on Tax-Exempt Bonds from becoming taxable under the Code; or

(m) To make any other change which in the judgment of Authority and Trustee is necessary or desirable and will not materially prejudice any non-consenting owner of a Bond.

**Supplemental Indenture With Consent of Bondowners.** Any modification or amendment of the Indenture and of the rights and obligations of the Authority and of the Owners of the Bonds thereunder, in any particular, may be made by a Supplemental Indenture, with the written consent (a) of the Owners of at least fifty-one percent (51%) in principal amount of the Bonds Outstanding at the time such consent is given, and (b) in the case when less than all of the several Series of Bonds then Outstanding are affected by the modification or amendment, the Owners of at least fifty-one percent (51%) in principal amount of the Bonds of each Series so affected and Outstanding at the time such consent is given; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified like Series and maturity remain Outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this Section. No such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price, if any, thereof, or in the rate of interest thereon without the consent of the Owners of such Bond, or shall reduce the percentages or otherwise affect the classes of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or shall change or modify any of the rights or obligations of any Fiduciary without the filing with the Trustee of the written assent

thereto of such Fiduciary in addition to the consent of the Bondowners. For these purposes, a Series shall be deemed to be affected by a modification or amendment of the Indenture if the same adversely affects or diminishes the rights of the Owners of Bonds of such Series.

**Defeasance.** The pledge and other moneys and securities pledged under the Indenture and any Supplemental Indenture and all covenants, agreements and other obligations of the Authority to the Bondowners shall cease and be satisfied if the Authority shall pay or cause to be paid, or there shall otherwise be paid: (i) to the Owners of all Bonds the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated in the Bonds and in the Indenture and any Supplemental Indenture and (ii) to the Trustee all amounts due and owing the Trustee. Subject to the Indenture provisions, any Outstanding Bonds shall, prior to the maturity or redemption date thereof be deemed to have been paid if (i) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Authority shall have given to the Trustee irrevocable instructions and notice of redemption, (ii) there shall have been set aside irrevocably in trust, in compliance with the Act, an amount which shall be sufficient to generate the principal of and the interest on which when due to provide moneys which, together with the moneys, if any, set aside in trust, in compliance with the Act, at the same time, shall be sufficient, to pay when due the principal or Redemption Price, if applicable, and interest due and to become due on said Bonds on or prior to the redemption date or maturity date thereof, as the case may be, and (iii) in the event said Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, the Authority shall have given the Trustee in form satisfactory to it instructions to mail a notice to the Owners of such Bonds that the deposit required by (ii) above has been made with the Trustee and a verification report from an independent certified public accountant confirming the sufficiency of the Defeasance Securities received by the Trustee and that said Bonds are deemed to have been paid and stating such maturity or redemption date upon which moneys are expected to be available for the payment of the principal or Redemption Price, if applicable, on said Bonds.

**Notice.** Any Notice, demand, direction, request or other, instrument authorized or required by the Indenture to be given to or filed with the Authority or the Trustee shall be deemed to have been sufficiently given or filed for all purposes of the Indenture if and when sent by registered mail, return receipt requested.

## THE FOURTH SUPPLEMENTAL INDENTURE

The following is a summary of certain provisions of the Fourth Supplemental Indenture. Such summary does not purport to be complete or definitive and reference is made to the Fourth Supplemental Indenture for a full and complete statement of the terms and provisions and for the definition of capitalized terms used in this summary and not otherwise defined under “**Appendix A - Glossary of Certain Defined Terms**”.

**Authorization and Details of the Series 2009 Bonds.** The Fourth Supplemental Indenture authorizes the issuance of the Series 2009A-1 Bonds, the Series 2009A-2 Bonds, the Series 2009B Bonds and the Series 2009C Bonds (collectively, the “Series 2009 Bonds”). The Series 2009A-1 Bonds, the Series 2009A-2 Bonds and the Series 2009B Bonds are designated as Senior Lien Bonds and the Series 2009C Bonds are designated as Subordinate Lien Bonds.

**Bonds Equally and Ratably Secured.** Except as otherwise provided in the Indenture and the Fourth Supplemental Indenture, including specifically for differences between the Senior Lien Bonds and the Subordinate Lien Bonds, the Series 2009 Bonds shall in all respects be equally and ratably secured.

**Details of the Series 2009 Bonds.** The Bonds shall be dated the date of delivery and shall be issuable as fully registered bonds in the denomination of five thousand dollars (\$5,000) or any multiple thereof, and shall bear interest paid semiannually on each April 1 and October 1 in the years and amounts specified in the Fourth Supplemental Indenture.

**Depository Provisions.** Initially, one certificate for each maturity of the Series 2009 Bonds will be issued and registered to the Securities Depository, or its nominee, in a book-entry system.

**Optional Redemption.** As directed by the Authorized Representative of the Authority, the Series 2009 Bonds are subject to redemption at the times and upon payment of the redemption prices specified in the Fourth Supplemental Indenture. If less than all of the Series 2009 Bonds of any Series are called for redemption, they shall be called in such order of maturity as the Authority may determine. That portion of any Bond to be redeemed shall be in the principal amount of five thousand dollars (\$5,000) or some multiple thereof, upon the owner’s surrender thereof. Notice of redemption shall be given in the manner set forth in Indenture.

**Application of Proceeds of Series 2009 Bonds; Application of Related Amounts.** The Fourth Supplemental Indenture provides for the deposit and application of the Series 2009 Bonds.

**Funds and Accounts.** The Fourth Supplemental Indenture establishes within the Construction Account a Series 2009A-1 Construction Subaccount and the Series 2009A-2 Construction Subaccount. There shall be established within the Senior Lien Interest Subaccount of the Senior Lien Debt Service Account the Series 2009A-1 Senior Lien Interest Subaccount, the Series 2009A-2 Senior Lien Interest Subaccount and the Series 2009B Senior Lien Interest Subaccount, within the Subordinate Lien Interest Subaccount of the Subordinate Lien Debt Service Account the Series 2009C Subordinate Lien Interest Subaccount, within the Senior Lien Principal Subaccount of the Senior Lien Debt Service Account the Series 2009A-1 Senior Lien Principal Subaccount, the Series 2009A-2 Senior Lien Principal Subaccount and the Series 2009B Senior Lien Principal Subaccount and within the Subordinate Lien Principal Subaccount of the Subordinate Lien Debt Service Account the Series 2009C Principal Subaccount and within the Senior Lien Redemption Subaccount of the Senior Lien Debt Service Account, the Series 2009A-1 Senior Lien Redemption Subaccount, the Series 2009A-2 Senior Lien Redemption Subaccount, the Series 2009B Senior Lien Redemption Subaccount and the Series 2009B Senior Lien Escrow Subaccount and within the Subordinate Lien Redemption Subaccount of the Subordinate Lien Debt



Service Account, a Series 2009C Subordinate Lien Redemption Subaccount and a Series 2009C Subordinate Lien Escrow Subaccount. The Fourth Supplemental Indenture establishes within the Senior Lien Debt Service Reserve Account a Series 2009A-1 Senior Lien Debt Service Reserve Subaccount, a Series 2009A-1 Senior Lien Debt Service Reserve Subaccount and a Series 2009B Senior Lien Debt Service Reserve Subaccount and within the Subordinate Lien Debt Service Reserve Account a Series 2009C Subordinate Lien Debt Service Reserve Subaccount. There is established within the Cost of Issuance Account a Series 2009 Cost of Issuance Subaccount. There is established in the Senior Lien Expense Account a Series 2009A-1 Senior Lien Expense Subaccount, a Series 2009A-2 Senior Lien Expense Subaccount and a Series 2009B Senior Lien Expense Subaccount and within the Subordinate Lien Expense Account a Series 2009C Subordinate Lien Expense Subaccount. Moneys in such subaccounts shall be used in accordance with the Indenture.

**Security for Series 2009 Bonds.** The Series 2009A Bonds and Series 2009B Bonds shall be equally and ratably secured under the Indenture with any other Senior Lien Bonds issued pursuant to the Indenture. The Series 2009C Bonds shall be equally and ratably secured under the Indenture with any other Subordinate Lien Bonds issued pursuant to the Indenture.

**Rebate Account.** The Fourth Supplemental Indenture establishes the Series 2009 Rebate Accounts to be held by the Authority to receive from legally available moneys for payment of the rebate obligations under the Code (the “Rebate Amount”).

## THE SPECIAL ESCROW AGREEMENT

The following is a summary of certain provisions of the Special Escrow Agreement. Such summary does not purport to be complete or definitive and reference is made to the Special Escrow Agreement for a full and complete statement of the terms and provisions and for the definition of capitalized terms used in this summary and not otherwise defined under “**Appendix A - Glossary of Certain Defined Terms**”.

**Flow of Funds.** The Matching Fund Revenues received by the Government from the United States pursuant to the Revised Organic Act of the Virgin Islands shall be delivered to the Special Escrow Fund. The Special Escrow Fund is to be held by the Special Escrow Agent to provide for the following deposits (in order of priority);

(i) the deposit with the Trustee, or any paying agent, at the direction of the Government of the amount set forth in a certificate of the Government delivered to the Special Escrow Agent on or before the Second Business Day prior to October 1 of each Fiscal Year, of amounts required, if any, for payment of principal of redemption premium, if any, and interest on, Senior Lien Bonds and other amounts required to fund fully the Senior Lien Debt Service Account in such Fiscal Year or any prior Fiscal Year;

(ii) the deposit with the Trustee, or any paying agent, at the direction of the Government or any designated trustees or paying agents of the amount set forth in a certificate of the Government delivered to the Special Escrow Agent on or before the Second Business Day prior to October 1 of each Fiscal Year, of amounts required, if any (after taking into account amounts required pursuant to the 1989 Escrow), for payment of principal of, redemption premium, if any, and interest on, Subordinate Lien Bonds and other amounts required to fund fully the Subordinate Lien Debt Service Account in such Fiscal Year or any prior Fiscal Year and to replenish any Senior Lien Debt Service Reserve Account to the Debt Service Reserve Requirement or any Subordinate Lien Debt Service Reserve Account to the Debt Service Requirement Level;

(iii) the deposit with the Government, in accordance with the Special Escrow Agreement, of any amounts in excess of the deposits, if any, required above, which amounts may be applied by the Government for any lawful purpose.

**Irrevocability of the Special Escrow Fund; Parity.** The assignment of the Matching Fund Revenues and the escrow created in the Special Escrow Agreement shall be irrevocable as long as any Bonds are Outstanding under the terms of the Indenture. The holders of the Senior Lien Bonds shall be on parity with each other and have a senior lien on any funds deposited in the Special Escrow Fund over the Subordinate Lien Bonds, which shall be on parity with each other, but the payment of which shall be junior and subordinate to the payment of the Senior Lien Bonds until such funds are used and applied in accordance with the Special Escrow Agreement.

**Termination.** The Special Escrow Agreement shall terminate when no Bonds are Outstanding under the terms of the Indenture. Any moneys remaining in the Special Escrow Fund at the time of such termination shall be released to the Government.

**APPENDIX C**

**SUMMARY OF CERTAIN PROVISIONS  
OF THE SERIES 2009 LOAN AGREEMENT**

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## SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2009 LOAN AGREEMENT

The following is a summary of certain provisions of the Series 2009 Loan Agreement. Such summary does not purport to be complete or definitive, and reference is made to the Series 2009 Loan Agreement for a full and complete statement of its terms and provisions and for the definition of capitalized terms used in this summary and not otherwise defined under “**Glossary of Certain Defined Terms**”.

**The Loan.** The Authority, on the terms and conditions set forth in the Series 2009 Loan Agreement, shall issue, sell, and deliver the Series 2009 Bonds to the Underwriters and make a Loan of the proceeds of the Series 2009 Bonds to the Government.

**Repayment of the Loan.** The Government promises to repay the Loan and observe the terms and provisions of the Series 2009 Loan Agreement. In consideration of the issuance of the Series 2009 Bonds by the Authority, the Government agrees to execute the Series 2009 Loan Notes. The Government shall repay the Series 2009 Loan Notes in annual installments upon receipt of the Matching Funds Revenues but not later than the Second Business Day next preceding October 1 in each year in the amounts equal to the amounts due for principal of Redemption Price, and interest on the Series 2009 Bonds that the Series 2009 Loan Notes secures.

**Redemption of the Series 2009 Loan Notes.** The Series 2009 Loan Notes may, at the option of the Government of the Virgin Islands, be redeemed, in whole or in part, prior to its maturity at the times, in the manner of and on the same maturities as an optional redemption of the Authority’s Series 2009 Bonds and at a redemption price equal to the principal amount, plus accrued interest thereon to the date of redemption and any premium required to provide for the payment of the optional redemption of the Authority’s Series 2009 Bonds.

**Application of Proceeds.** The Authority shall deposit all funds received from the proceeds of the Series 2009 Bonds into the respective Accounts and Subaccounts in accordance with the Series 2009 Loan Agreement.

**Security.** The revenues pledged to pay the debt service on the Series 2009 Bonds are derived from the Series 2009 Loan Notes. The Series 2009 Loan Notes are a special limited obligation of the Government and is secured solely by a pledge of the Matching Fund Revenues. The Series 2009 Loan Notes are not a debt of the United States of America and the United States of America is not liable on the Series 2009 Loan Notes. The Series 2009 Bonds shall under no circumstances constitute a general obligation of the Authority, the United States Virgin Islands, or the United States of America nor shall the United States of America or the United States Virgin Islands be liable thereon. The Authority has no taxing power. The Government pledges and assigns its interest in the Matching Fund Revenues and the Special Escrow Agreement to the Trustee as security for the payment of the Series 2009 Loan Notes and consents therein to the deposit of the Matching Fund Revenues into the Special Escrow Fund.

The Series 2009A-1 Loan Note, the Series 2009A-2 Loan Note and the Series 2009B Loan Note shall be considered to be issued on a parity basis with respect to each other and other Senior Lien Loan Notes and shall have priority over the Series 2009C Loan Note and other Subordinate Lien Loan Notes regarding the payment of principal and interest out of the Matching Fund Revenues.

**Representations and Warranties of the Government.** The Government makes the following representations and warranties to the Authority:

(a) As of the date hereof, the amount of Matching Fund Revenues anticipated to be received by the Government is a sum which, during the period the Series 2009 Loan Notes are Outstanding, is in excess of the amount necessary to pay the principal of and interest on the Series 2009 Loan Notes issued in connection with the Series 2009 Bonds.

(b) The Government is duly authorized and has full power and authority to execute, deliver and perform its obligations under the Series 2009 Loan Agreement, the Special Escrow Agreement and the Series 2009 Loan Notes.

(c) The execution, delivery and performance by the Government of the Series 2009 Loan Agreement, the Special Escrow Agreement and the Series 2009 Loan Notes (i) have been duly authorized by all necessary action on the part of the Government; (ii) do not conflict with, or result in a violation of, any provision of law or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to the Government; (iii) do not and will not conflict with, result in a violation of, or constitute a default under, any agreement, resolution, mortgage, indenture or instrument to which the Government is a party or by which the Government or any of its property is bound; and (iv) do not and will not result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature upon or with respect to any property of the Government.

(d) No authorization, consent, approval, permit, license, exemption of or filing or registration with, any court or governmental department, commission, board, bureau, agency or instrumentality is or will be necessary for the valid execution, delivery or performance by, or enforcement against or by, the Government of the Series 2009 Loan Agreement or the Series 2009 Loan Notes.

(e) The Series 2009 Loan Agreement, the Special Escrow Agreement and the Series 2009 Loan Notes when executed and delivered by the Government will, assuming the due execution of and delivery by the other parties thereto, constitute, the legal, valid and binding obligations of the Government enforceable against the Government in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws hereinafter enacted or principles of equity affecting the enforcement of creditors' rights generally as such laws may be applied in the event of insolvency, reorganization or other similar proceeding of, or moratorium applicable to, the Government.

(f) The Government is duly authorized under all applicable laws to pledge and assign the Special Escrow Agreement and Matching Fund Revenues for the payment of principal and interest on the Series 2009 Loan Notes. The Special Escrow Agreement and Matching Fund Revenues pledged and assigned hereby to the payment of principal and interest on the Series 2009 Loan Notes, will be free and clear of any pledge, lien, charge or encumbrance thereon with respect thereto, the Initial Series of Bonds and Additional Bonds prior to or of equal rank with, the pledge created by the Series 2009 Loan Agreement, and all action on the part of the Government to that end has been and will be duly and validly taken.

(g) There are no suits, actions, proceedings or investigations pending or, to the best knowledge of the Government, threatened against or affecting the Government or any of its properties, before or by any court or governmental department, commission, board, bureau, agency or instrumentality, which involve or would materially adversely affect any of the transactions contemplated or by the Series 2009 Loan Notes, or which, if determined adversely, could have a material adverse effect on the financial condition, properties or operations of the Government, or adversely affect the authority of the Government to perform its obligations under the Series 2009 Loan Agreement or under the Series 2009 Loan Notes.

(h) The Government is not, in any material respect, in breach of or in default under any applicable law or administrative regulation of the United States Virgin Islands or of the United States, relating, in each case, to the issuance of debt securities by the Government, or any applicable judgment, decree or loan agreement, note, resolution, ordinance, agreement or other instrument to which the Government is a party or is otherwise subject, the consequence of which or the correction of which would materially and adversely affect the financial condition or operations of the Government as a whole.

(i) At the time of issuance of the Series 2009 Loan Notes, other than the Series 1998 Bonds and the Series 2004A Bonds, there are no other bonds, notes, or other evidences of indebtedness of the Government Outstanding that are secured by the Matching Fund Revenues.

**Covenants of the Government.** The Government covenants and agrees that, among other actions, the Government shall:

(a) Observe and comply with the terms and conditions of and perform all of its obligations under the Series 2009 Loan Agreement, the Series 2009 Loan Notes and Special Escrow Agreement, and will pay all amounts payable by it according to the terms of the Series 2009 Loan Agreement.

(b) Promptly notify the Authority and the Trustee in writing of the occurrence of (i) any Event of Default under the Series 2009 Loan Agreement and (ii) any default under documents governing any debt of the Government.

(c) Request that the United States deliver and take all steps necessary to ensure the receipt of the maximization of Matching Fund Revenues for which the Government is eligible, and deposit such funds in the Special Escrow Fund.

(d) Observe and comply with the terms and conditions of and perform all of its obligations under the Special Escrow Agreement.

(e) Defend, preserve and protect the pledge of the Matching Fund Revenues and if applicable, the Substitute Revenues, under the Loan Agreement and the security interest under the Special Escrow Agreement and all rights of the holders of the Series 2009 Loan Notes against all claims and demands of all third parties.

(f) Consent to the assignment pursuant to the Indenture, of all right, title and interest of the Authority in the Series 2009 Loan Agreement, and all amendments, modifications and renewals thereof, to the Trustee, reserving to the Authority, however, the rights providing that notices and other communications be given to the Authority.

(g) Provide to the Authority within 180 calendar days of the end of each Fiscal Year a financial report summarizing annual receipts of Matching Fund Revenues, and if applicable, the Substitute Revenues.

(h) No later than 180 days after the close of the fiscal year, the Commissioner of Finance of the Government of the Virgin Islands shall deliver to the Trustee a certificate of the Matching Fund Revenues available, after satisfaction of any prior lien debt service, and relevant debt service coverage calculations for such Fiscal Year.

(i) Include in the annual operating budget of the Government submitted to the Legislature an appropriation for the Molasses Subsidy and use its best efforts to ensure appropriation by the Legislature of a subsidy on molasses.

(j) Not revoke or amend in any way the Special Escrow Agreement or terminate the Special Escrow Agreement.

(k) Not allow the Matching Fund Revenues to be encumbered by any lien, charge or encumbrance other than pursuant to any Additional Senior Lien Bonds or Additional Subordinate Lien Bonds.

(l) Not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest represented by the Series 2009 Tax Exempt Bonds. The Government will not directly or indirectly use or permit the use of any proceeds of the Series 2009 Tax Exempt Bonds or take or omit to take any action that would cause the Series 2009 Tax Exempt Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code. To that end, the Government will comply with all requirements of Section 148 of the Code to the extent applicable to the Series 2009 Tax Exempt Bonds. Without limiting the generality of the foregoing, the Government agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Series 2009 Taxable Bonds from time to time.

(m) Not fail to include in the annual operating budget of the Government a subsidy on molasses at a level that ensures that rum production in the Virgin Islands remains competitive with production in competing jurisdictions.

(n) Not take any actions, or fail to take any action that would in any way impair the Government’s right to receive the maximum amount of Matching Fund Revenues to which it may be entitled.

(o) In the event the federal government discontinues the payment of Matching Fund Revenues and substitutes another stream of revenues thereof, the Government will use its best efforts to pledge the substitute revenues to repayment of the Series 2009 Loan Notes.

**Affirmative Covenants of Authority.** The Authority shall use its best efforts to cause the Government to comply with the covenants set forth in the Loan Agreement.

**Events of Default.** The occurrence of any of the following events shall be an “Event of Default” under the Loan Agreement:

(a) The Government shall fail to pay when due any amount payable on the Series 2009 Loan Notes; or

(b) The Government shall fail to perform or observe any term, covenant or agreement contained in this Agreement on its part to be performed or observed and any such failure shall remain unremedied for 30 days after written notice thereof shall have been given to the Government by the Authority or the Trustee, provided, however, that if said default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Government within the applicable period and diligently pursued until the default is corrected; or

(c) An “Event of Default” under the Indenture.



**Rights on Default.** If an Event of Default shall happen and shall not have been remedied, then, and in every such case, the holders of the Series 2009 Loan Notes may (i) sue to collect sums due under such Series 2009 Loan Notes, (ii) compel to the extent permitted by law, by mandamus or otherwise, the performance by the Government of any covenant made in the Series 2009 Loan Agreement or the Series 2009 Loan Notes, and (iii) examine the books and records of the Government to account for all moneys and securities constituting the Matching Fund Revenues.

**Continuing Obligation.** Until the date on which all amounts due and owing to the Authority from the Government pursuant to the Series 2009 Loan Notes shall have been paid in full or otherwise provided for, the Agreement is a continuing obligation of the Government and shall (i) be binding upon the Government, its successors and assigns and (ii) inure to the benefit of and be enforceable by the Authority and the Trustee and their respective successors, transferees and assigns.

**Amendments, Changes, and Modifications.** The Governor, on behalf of the Government, and with the consent of the Authority and the Trustee, may execute a supplement to the Series 2009 Loan Agreement curing any ambiguity or curing, correcting or supplementing any defect or inconsistent provision contained in the Series 2009 Loan Agreement or making such provisions in regard to matters or questions arising in the Series 2009 Loan Agreement as may be necessary, or desirable and as shall not materially adversely affect the interests of the holders of the Series 2009 Loan Notes. Such supplement shall become effective upon the filing with the Government an instrument of the holder of the Series 2009 Loan Notes approving such supplement. In addition, the Governor may execute a supplement to the Series 2009 Loan Agreement at any time and from time to time modifying any provision of the Series 2009 Loan Agreement with the consent of the holders of the Series 2009 Loan Notes, except as provided in the Indenture.

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APPENDIX D

**Verification and Projection of Virgin Islands Matching Fund Revenues from Rum Shipments to the US**

Submitted to:

**Virgin Islands Public Finance Authority**

Prepared by:

**IHS Global Insight, Inc.  
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**September 18, 2009**

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## **Disclaimer**

**The projections and forecasts included in this report, including, but not limited to, those regarding future excise tax revenues, are estimates, which have been prepared on the basis of certain assumptions and hypotheses. No representation or warranty of any kind is or can be made with respect to the accuracy or completeness of, and no representation or warranty should be inferred from, these projections and forecasts. The projections and forecasts contained in this report are based upon assumptions as to future events and, accordingly, are subject to varying degrees of uncertainty. Some assumptions inevitably will not materialize and, additionally, unanticipated events and circumstances may occur. Therefore, for example, actual matching fund revenues inevitably will vary from the projections and forecasts included in this report and the variations may be material and adverse.**

## Executive Summary

### *Revenue Verification*

IHS Global Insight reviewed records that document the Matching Fund Revenue collection and transfer process during the period from FY 1992 through FY 2008. This review indicated that the annual Matching Fund Revenues transferred to the United States Virgin Islands Government ("VI") are consistent with excise taxes collected from U.S. distillers on purchases of bulk VI rum and U.S. Customs Service ("Customs") duties levied on cased VI rum. This conclusion is based on a review of the method by which Matching Fund Revenues are calculated and transferred, which involves a process of revenue projections and subsequent adjustments based on actual revenues collected. Between FY 1992 and FY 2008 certain revenue transfers did not exactly equal the amounts that would be expected, given this projection and adjustment process. Because these discrepancies were minimal, however, we considered them immaterial.

### *Revenue Projection*

Projections of future Matching Fund Revenues in this report are derived in two parts. First we project the revenues based on shipments from the existing rum plant ("Cruzan") operated by Fortune Brands. Second, we add the revenues projected from shipments by Diageo USVI, Inc. ("Diageo") of rum to be used in the production of Captain Morgan branded products, which are expected to commence in 2012.

We present three alternative scenarios – a baseline forecast and one low and one high scenario - of future rum shipments and Matching Fund Revenues. The first model, our Constant Market Share Model, projects Matching Fund Revenues as a function of U.S. rum consumption. This model, in accord with an upturn in the past decade, predicts an increasing revenue stream consistent with our forecast of higher U.S. consumption, which is similar to the projection of rum consumption contained in the *Adams Liquor Handbook (2008, 2009)*. In each scenario U.S. rum consumption is moderated significantly by the current recession in U.S. economy, which is not expected to return to robust growth until 2011.

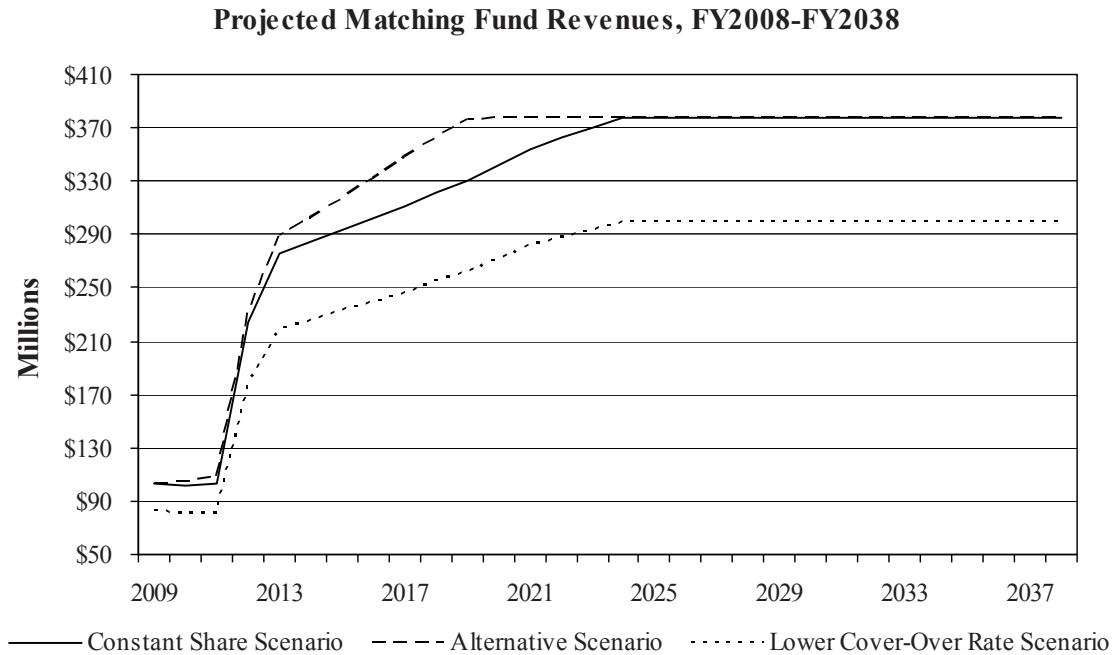
This model projects that growth in U.S. rum consumption will average 2.5% during the 30 years from 2008 to 2038, reaching 51.6 million 9-liter cases in 2038. Matching Fund Revenues from the Cruzan plant also will average 3.0% growth annually from 2009 to 2022, when the plant's matured rum shipment capacity of 10.5 million proof gallons is reached. At that capacity Matching Fund revenues from Cruzan will equal \$139.1 million annually. Under the similar constant share scenario, it is assumed that Captain Morgan maintains its current share of the U.S. rum market, the new plant reaches its matured rum shipment capacity of 18.9, million proof gallons in 2024, and it will then generate Matching Fund revenues of \$238.5 million annually. This assumes that the U.S. Government's current "cover-over" rate (i.e. the portion of excise tax revenues actually transferred to the VI Government remains unchanged at \$13.25 per proof gallon).

The second model, our Growing Market Share Model, projects that Cruzan and Captain Morgan will increase their share of the U.S. rum market. This model projects higher growth in Matching Fund Revenues than the Constant Market Share model. Matching Fund Revenues reach an annual total of \$377.6 million by 2020 as a result of an average rate of growth of Fortune Brands shipments of Cruzan and bulk rum of 4.2% per year from 2009 to 2018, and of Diageo shipments of Captain Morgan of 4.7% until capacity is reached in 2020. As with the first model, this projection assumes that the U.S. Government's \$13.25 per proof gallon cover-over rate remains unchanged.

Finally, our third scenario shows future Matching Fund Revenues under the assumption that the cover-over rate reverts to \$10.50 per proof gallons. Under this scenario, annual Matching Fund Revenues reach a peak of \$299.3 million in fiscal year 2024.

Graph 1 below illustrates the Matching Fund Revenues projected by these three scenarios.

**Graph 1**



## Revenue Verification

### Revenue Estimate and Transfer Process

The VI Government receives revenue from the U.S. federal excise taxes that are levied on VI rum shipped to and used for consumption in the United States. Virtually all of this rum is produced by a single producer, Cruzan owned by Fortune Brands. Federal excise taxes levied on VI rum are paid by U.S. distributors when they bottle VI rum shipped in bulk to the US, and are collected by the Alcohol and Tobacco Tax and Trade Bureau (“TTB”) of the U.S. Department of Treasury (“Treasury”).<sup>4</sup> TTB collects these taxes at the rate of \$13.50 per proof gallon. Currently, the portion of these revenues which is actually transferred to the VI Government is, by statute, \$13.25 per proof gallon. These federal excise tax collections, based on the \$13.25 rate, are known as the “cover-over” Matching Fund Revenues received by the VI.<sup>5</sup> A cover-over rate of \$11.30 expired on September 30, 1998, reverting to a rate of \$10.50 per proof gallon. In fiscal year 2000, the rate increased from \$10.50 to the current rate of \$13.25 per proof gallon. In addition, monies collected by Customs on cased rum (rum produced and bottled in the VI and exported to the US), also currently computed at the \$13.25 rate, are included in Matching Fund Revenues. These collections are typically small in magnitude compared to bulk collections, as about 99% of VI rum is exported in bulk to the US.

Matching Fund Revenues are not transferred to the VI directly when collected by TTB. Instead, the process by which they are received by the VI involves an annual advance of monies, based on projected tax revenues (referred to as the “base advance”), and subsequent adjustments to this advance. These adjustments are equivalent to the difference between the base advance and actual earnings two FYs earlier. Therefore, the amount of Matching Fund Revenues received by the VI Government during a given FY does not equal the “cover-over” amounts collected during the same 12-month period. For example, the FY 2007 advance was equal to projected FY 2007 revenues adjusted by the difference between the FY 2005 base advance and actual FY 2005 collected tax revenues. These actual monthly collected federal excise tax revenues are reported by TTB through Monthly Cover-Over Reports submitted to the U.S. Department of the Interior (“Interior”).

Each year, the VI Government requests the VI’s Matching Fund Revenue advance through a letter submitted by the Governor of the Virgin Islands (the “Governor”) to Interior. The Governor’s request is based on an estimate by the VI Office of Management and Budget (“OMB”) of rum production and the resulting federal excise tax revenues to be collected and the appropriate adjustment for that year. This adjustment is based on collected tax revenues two fiscal years earlier. Interior then determines the amount that will be transferred to the VI Government, and requests that Treasury transfer that amount to an account held by the Special Escrow Agent acting on behalf of the VI Government (the “Escrow Account”), pursuant to a certain Special Escrow Agreement by and between the Government and the Special Escrow Agent (the “Special Escrow Agreement”).

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<sup>444</sup> Prior to 2003, TTB was known as the Bureau of Alcohol, Tobacco and Firearms (“BATF”). All references to data reviewed and received before 2003 will be referenced as TTB for consistency.

<sup>5</sup> The term “cover-over” revenue can also be used to refer to all tax revenues collected on the sale of rum in the United States and transferred to the VI, including Caribbean Basin Initiative (“CBI”) funds. These CBI funds are collected from excise taxes on rum imported into the U.S. from sources other than the VI and Puerto Rico. For this report, only those funds generated from VI rum exports to the U.S. were considered since it is these revenues that comprise the Matching Fund Revenues and are pledged to secure the Bonds.

## Data Verification

Since Matching Fund Revenues secure the Bonds, it is the flow of these funds that was the focus of our data verification efforts. Specifically, our objective was to confirm that the Matching Fund Revenues collected by Customs and eligible for transfer to the VI Government equaled the funds actually transferred to the VI Government. Confirming this flow of funds is complicated by the fact that, as described above, revenues are subject to an advance and adjustment process. The following sources were used to document this process and were the primary components of the verification process:

1. **Interior letters to Treasury requesting the annual transfer of Matching Fund Revenues to the VI.** These letters provide three central pieces of information:
  - a) estimate of the annual base advance of VI excise tax revenues,
  - b) the adjustment to be made to the base advance based after verification of the actual excise taxes collected in the second preceding FY; and
  - c) the adjusted amount to be transferred to the Escrow Account held by the Special Escrow Agent on behalf of the VI Government.
2. **TTB Monthly Cover-Over Reports.** These reports document the amount of federal excise taxes collected monthly by the TTB and eligible for transfer to the VI, based on the cover-over rate. These reports provide a record of the amounts the VI actually earned through the federal excise tax collected on rum in a given month. The reports detail the four components of the Virgin Islands' total net monthly rum earnings, which are defined below:
  - a) Bulk Spirits collections - revenue collected from bulk rum purchases;
  - b) Customs collections - Customs collections on cased rum,
  - c) Adjustment to Bulk - correction applied to account for discrepancies discovered in past Bulk Spirits collections calculations; and
  - d) Adjustment to Customs - correction applied to account for discrepancies discovered in past Customs collections calculations.
3. **Bank Statements.** The annual Matching Fund transfer is deposited into the Escrow Account. Bank statements for this account provide a record that the transfer amount requested by the Interior was in fact received on behalf of the VI Government.

In addition to these documents, we also collected information from OMB. OMB records information associated with the federal excise tax revenue collection process and provided a series of spreadsheets that it uses to track rum excise tax revenues and shipments. In preparing its estimate of federal excise taxes to be available for transfer to the VI, OMB reviews historical rum shipments and earnings and projected rum shipments and sales for the next fiscal year prepared by Cruzan. Although the Governor uses OMB's estimate in making annual transfer requests to Interior, it is ultimately Interior that determines the amount of the advance that is transferred. Therefore, a verification of OMB's forecasts and subsequent requests was not performed. OMB's information did, however, provide a supplement to other data sources.

## Verification Findings

Table 1 summarizes the data received and used for the Matching Fund Revenue verification.



**Table 1**  
**Inventory of Data Received, FY 1992 – FY2008**

<b>Fiscal Year</b>	<b>Interior Advance Request Letter</b>	<b>Monthly Cover-Over Letters<sup>1/</sup></b>	<b>Bank Statement</b>
1992	√	√	
1993	√	√	
1994	√	√	
1995	√	√	√
1996	√	√	√
1997	√	√	√
1998	√	√	
1999	√	√	√
2000	√	√	√
2001	√	√	√
2002	√	√	√
2003	√	√	√
2004	√	√	√
2005	√	√	√
2006	√	√	√
2007	√	√	√
2008	√	√	√

<sup>1/</sup>Cover-Over Letters for FY 1990 and FY 1991 also were reviewed so that FY 1992 and FY 1993 advances could be verified.

It also should be noted that we reviewed data from the sources above for years prior to the verification period. This review, while not formally included in our data verification, did not present any information that contradicts our verification findings.

## **Verification Questions and Findings**

### *Verification Questions*

In order to verify the federal excise taxes collected and the Matching Fund Revenues transferred to the VI Government, we addressed the following questions for the FY 1992 through FY 2008 period:

1. For each year, what was the difference between the base advance for a given year and the actual earnings for that year, as recorded in TTB's Monthly Cover-Over Reports? We assumed that the difference for each year would be used to adjust the base advance in the second fiscal year immediately following.
2. Do annual funds authorized for transfer to the VI equal the base advance for a given year adjusted by the difference discussed in item one, for two fiscal years earlier?
3. Are the annual transfer amounts authorized by Interior equal to deposits transferred to VI Escrow account?

### *Verification Findings*

Our findings with regard to these questions are as follows:

1. In order to verify actual earnings, we compiled data from TTB's Monthly Cover-Over Reports. The earnings figure used for Matching Fund Revenue calculations, according to TTB, is the "Total" figure (i.e. the sum of Bulk Spirits, Customs, Adjustment to Bulk and Adjustment to Customs) reflected in the chart below. Note that the cover-over rate increased from \$10.50 to \$11.30 per proof gallon at the beginning of FY 1995, declined to \$10.50 in FY 1999, and increased to \$13.25 in FY 2000 and remains at that rate today.

**Table 2**  
**TTB Monthly Cover-Over Reports**  
**Components of Matching Fund Revenues, FY 1990-FY 2008**

Fiscal Year	(a) Bulk Spirits (\$)	(b) Customs (\$)	(c) Adjustment to Bulk (\$)	(d) Adjustment to Customs (\$)	TOTAL (\$)
1990	28,735,178.45	8,185.21	221,062.69	0	28,964,426.35
1991	27,319,420.71	1,505.72	198,293.02	0	27,519,219.45
1992	27,943,258.16	15.03	586,594.47	-3.53	28,529,864.13
1993	30,633,882.04	19.44	-1,238,291.98	62.22	29,395,671.72
1994	29,782,689.33	59.63	545,373.27	0	30,328,122.23
1995	41,002,332.97	9,692.90	11,080.84	0	41,023,106.71
1996	43,579,475.37	16,145.29	-954,413.99	0	42,641,206.67
1997	46,020,134.23	1,987.83	-398,421.88	0	45,623,700.18
1998	50,239,651.31	15,255.34	53,216.22	0	50,308,122.87
1999	50,661,915.08	27,649.87	457,782.24	-7361.72	51,139,985.47
2000	58,947,063.81	11,136.58	3,732,477.89	0	62,690,658.28
2001	66,341,451.53	7227.61	1,743,039.50	0	68,091,718.64
2002	63,310,703.51	19.63	-2,974,189.24	0	60,336,533.90
2003	64,106,256.03	3.49	-3403.88	0	64,102,855.64
2004	65,316,014.38	8.77	9,684,513.20	0	75,000,536.35
2005	74,278,805.73	1236.48	845,567.30	0	75,125,609.51
2006	76,126,242.64	3786.94	-5,250,675.54	0	70,879,354.04
2007	75,885,170.48	26.72	10,825,147.57	0	86,710,344.77
2008	85,769,141.32	2,084.45	6,167,304.61	0	91,938,530.48

Source: TTB Monthly Cover-Over Letters, FY 1990 - FY 2008.

- (a) Bulk Spirits - revenue collected from bulk rum purchases, calculated at the \$10.50 per proof gallon rate through FY1994, at the \$11.30 rate through FY1998, at the \$10.50 rate in FY1999, and then at \$13.25 for FY 2000 through FY 2008.
- (b) Customs - Customs collections on cased rum, computed at the 10.50 per proof gallon rate through FY1994, at the \$11.30 rate through FY1998, at the \$10.50 rate in FY1999, and at \$13.25 for FY 2000 through FY 2008.
- (c) Adjustment to Bulk - correction applied to account for discrepancies in past Bulk Spirits collections calculations. The very large adjustment in 2004 was the result of a year end adjustment of earlier monthly revenues from a \$10.50 rate to a \$13.25 rate.
- (d) Adjustment to Customs - correction applied to account for discrepancies discovered in past Customs collections calculations.
- (e) The large difference in FY2007 and FY2008 is due to collections taking place at the \$10.50 cover-over rate for several months in each period until the \$13.25 cover-over rate to be renewed. Once the rate was renewed, the difference for those months was forwarded by Treasury to the VI.

As described in Table 2 above, Adjustments to Bulk and Adjustments to Customs are corrections applied to account for reporting discrepancies in past calculations. Typically, these adjustments result from TTB audits of past reports. There have been years when relatively large adjustments were applied, as in

FY1993, FY2000, FY2001 and FY2002. The FY2000 adjustment is the result of a change in the portion of the excise tax, or cover-over rate, from \$10.50 to \$13.25 during the fiscal year. The adjustments in FY1993, FY2001 and FY2002 were corrections to past calculations.

For each year, the difference between total earnings and the base advance for that year represents the amount by which projected revenues differed from actual Matching Fund Revenues. This difference is used two fiscal years later to adjust the current FY base advance amount. Table 3 details these differences, and the fiscal years in which they were applied as an adjustment. For example, the FY2002 advance of \$60,121,000 was \$215,534 greater than actual collections during that fiscal year. Thus, when the FY2004 advance was requested an adjustment of that amount was made, decreasing the size of the FY2004 advance payment.

**Table 3**  
**Components of Annual Adjustment Applied to Matching Fund Revenues**  
**FY 1990 through FY 2008**  
**Base Advances, Actual Excise Tax Collections and Subsequent Differences**

<b>FY In Which Adjustment Applied</b>	<b>Adjustment From FY</b>	<b>Projected Matching Fund Revenues (\$) <sup>1/</sup></b>	<b>Totals from Cover-Over Reports (\$) <sup>2/</sup></b>	<b>Expected Adjustment (\$)</b>
1992	1990	29,000,000.00	28,964,426.35	-35,573.65
1993	1991	29,000,000.00	27,519,219.45	-1,480,780.55
1994	1992	28,500,000.00	28,529,864.13	29,864.13
1995	1993	29,000,000.00	29,395,671.72	395,671.72
1996	1994	30,928,800.00	30,328,122.23	-600,677.77
1997	1995 <sup>3/</sup>	52,500,000.00	41,023,106.71	-11,476,893.29
1998	1996	43,628,000.00	42,641,206.67	-986,793.33
1999	1997	46,150,000.00	45,623,700.18	-526,299.82
2000	1998 <sup>4/</sup>	46,515,000.00	50,308,122.87	3,793,122.87
2001	1999	43,634,997.00	51,139,985.47	7,504,988.47
2002	2000 <sup>5/</sup>	64,432,940.00	62,690,658.28	-1,742,281.72
2003	2001	67,610,513.00	68,091,718.64	481,205.64
2004	2002 <sup>5/</sup>	60,121,000.00	60,336,533.90	215,533.90
2005	2003	70,397,250.00	64,102,855.64	-6,294,394.36
2006	2004	65,849,003.00	75,000,536.35	9,151,533.35
2007	2005	66,961,000.00	75,125,609.51	8,164,609.51
2008	2006	78,712,000.00	70,879,354.04	-7,832,645.96
2009	2007	71,295,000.00	86,710,344.77	15,415,344.77
2010	2008	73,164,000.00	91,938,530.48	18,774,530.48

Source: <sup>1/</sup> Interior letters to Treasury and VI OMB.

<sup>2/</sup> TTB Monthly Cover-Over Reports.

<sup>3/</sup> The large over-estimate in 1994 was the result of uncertainty over the impact of the Todhunter acquisition of VIRIL in 1994.

<sup>4/</sup> The VI requested and received an early payment of \$3.8 million in December 1998 in recognition of the large forthcoming adjustment. This amount was the equivalent of the adjustment expected to be made in FY2000. Since this was paid in advance, there was no expected adjustment in FY2000.

<sup>5/</sup> There was an additional adjustment in FY2000, due to an increase in the excise tax. In FY2000, the initial request was based on \$10.50 cover-over rate, and an additional request was made based on the increased \$13.25 cover-over rate.

2. Once we determined these differences, we verified that these differences were, in fact, the amounts used to adjust annual base advances for the relevant fiscal year. In order to do this, we compared these differences to information included in Interior's letters to Treasury.

**Table 4**  
**Differences Between Expected Adjustments and Actual Adjustments**  
**FY 1992 through FY 2008**

Fiscal Year	Projected Matching Fund Revenues (\$) <sup>1/</sup>	Actual Advance (\$) <sup>2/</sup>	Actual Adjustment (\$)	Expected Adjustment (\$) <sup>3/</sup>	Difference Between Expected and Actual Adjustment (\$)
1992	28,500,000.00	28,651,241.00	151,241.00	-35,573.66	186,814.66
1993	29,000,000.00	27,519,220.00	-1,480,780.00	-1,480,780.55	0.55
1994	30,928,800.00	30,959,601.00	30,801.00	29,864.13	936.87
1995	52,500,000.00	52,707,921.00	207,921.00	395,671.72	-187,750.72
1996 <sup>4/</sup>	43,628,000.00	43,027,653.00	-600,347.00	-600,677.77	330.77
1997	46,150,000.00	34,673,107.00	-11,476,893.00	-11,476,893.29	0.29
1998	46,515,000.00	45,596,124.00	-918,876.00	-986,793.33	-67,917.33
1999	43,635,000.00	43,108,700.00	-526,300.00	-526,299.82	-0.18
2000	64,432,940.00	64,433,000.00	60.00	0.00	60.00
2001	67,610,513.00	75,116,000.00	7,505,487.00	7,504,988.47	498.53
2002	60,121,000.00	58,372,000.00	-1,749,000.00	-1,742,341.72	-6,658.28
2003	70,397,250.00	70,878,000.00	480,750.00	481,205.64	-455.64
2004 <sup>5/</sup>	65,849,003.00	63,097,000.00	-2,752,000.00	215,533.90	-2,967,533.90
2005 <sup>5/</sup>	66,961,000.00	63,635,053.00	-3,326,000.00	-6,294,394.36	2,968,394.36
2006	78,712,000.00	87,864,078.00	9,152,000.00	9,151,533.35	466.65
2007	71,295,000.00	79,459,206.00	8,165,000.00	8,164,609.51	390.49
2008	73,164,000.00	65,330,477.16	-7,833,000.00	-7,832,645.96	-354.04

Source: <sup>1/</sup>, <sup>2/</sup> Interior letters to Treasury and VI OMB.

<sup>3/</sup> Derived from TTB Monthly Cover-Over Reports.

<sup>4/</sup> FY 1996's advance was received in two stages.

<sup>5/</sup> The expected adjustments for FY 2004 and FY 2005 differs from data in Table 3 due to a revision in the Projected Matching Funds Revenue from \$63,089,000 to \$60,121,000.

As indicated in Table 4, actual adjustments are reasonably close to expected adjustments for most years in the verification period. There are notable exceptions, however, specifically in FY 1992, FY 1995 and FY 2005. In reviewing data for these years, we have found the following possible explanations for these differences.

- a. The adjustment used for the FY 1992 advance was derived from FY 1990 earnings. Earnings data provided by OMB suggest that there may have been an adjustment to December 1989 earnings of approximately \$186,816. OMB's records of earnings for FY 1989 reflect the unadjusted, bulk spirits revenue from TTB's Monthly Cover-Over Reports. The report that we received from TTB for this month indicates bulk spirits revenue of \$2,509,631.15, which is \$186,815.85 less than OMB's record of \$2,696,447.00. While there is no TTB documentation to confirm an adjustment specifically in this amount, the fact that OMB's figures imply an adjustment so close to the amount in question suggests that a later adjustment to December 1989 earnings was made.
- b. The difference in question for FY 1995, which is based on FY 1993 actual earnings, suggests that perhaps the December 1989 adjustment discussed in item a, above, was applied in FY 1993. As indicated by the example Monthly Cover-Over Report, detailed reasons for earnings adjustments are not specified by TTB. As a result, TTB's adjustment for a given month could be comprised of a number of individual component adjustments. For FY 1993, a net total adjustment of -\$1,238,229.76 was applied. The fact that the difference in question for the FY 1995 adjustment (-\$187,750.72) is so close to the FY 1992 adjustment discrepancy (\$186,414.66) suggests that TTB applied a FY 1990 earnings adjustment in FY 1993 that was approximately \$187,000.

The aggregate of differences between the FY 1992 through FY 2008 period is minimal, and is equal to less than \$73,000. This is an immaterial difference, given the magnitude of earnings figures.

3. The bank statements that we have received match the Interior request letters. While there are three years in the verification period for which bank statements were not available, we did not consider this material. Based on the documentation we do have, there is no reason to believe that Matching Fund transfers officially requested by the Department of Interior were not deposited into the VI Government Escrow Account.

## Revenue Projections

### Introduction: The Rum Industry

#### *The U.S. Spirits Industry*

The distilled spirits industry generally embarked on a period of expansion in the past two decades. Previously U.S. consumption had been declining steeply since the early 1980s. By 1995 the volume of consumption had fallen to 137.3 million 9-liter cases, 28% less than the 190.9 million cases consumed in 1980. The year 1995 proved to be the trough of this cycle however. Since then, consumption has been steadily increasing, reaching 185.5 million 9-liter cases in 2008, following 2.1% growth over 2007. Industry projections are for further growth, of 1.3% for 2009, and averaging 1.8% annually over the next five years.<sup>6</sup>

Two broad socio-economic factors have been at work over this time. First, a growing health-consciousness among American consumers in the 1970s led to a reduction in alcohol consumption generally, and to a shift to beer and wine as hard liquor alternatives. Then, strong economic expansions boosted levels of disposable income. Consumer spending generally surged, and consumption shifted to more expensive, premium products. This refinement in tastes of Americans has been reflected in a shift in the composition of the distilled spirits market. Demand has shifted from whiskeys to non-whiskeys, particularly to vodka and rum.

This transition has mirrored the nation's demographics as the baby boom generation dominated consumption, replacing the habits of the previous generations. Subsequently, younger cohorts with more disposable income have driven the bar and restaurant market for premium cocktails.

#### *The Rum Category*

The rum industry's share of the U.S. distilled spirits market has grown steadily since 1992, reaching 13.3% in 2008. U.S. rum consumption has been rising for thirteen consecutive years since 1995. In 2008, U.S. rum consumption reached 24.6 million 9-liter cases, up 2.7% from 2007. As has also occurred with vodkas, recent growth has been in premium brands and in flavored varieties.

Rum is a highly concentrated market, with the top four brands accounting for more than 70% of U.S. consumption. While Bacardi remains the leading rum, selling 9.4 million 9-liter cases in 2008, Captain Morgan, the number two brand, has been growing more quickly and has thus seen significant gains in market share. In 2008, with 6.4 million 9-liter cases, Captain Morgan's share of U.S. rum consumption amounted to 26.1%, up from just 21.2% in 2002. Cruzan's leading brand has also been gaining market share. With average annual growth rate of 11.5% between 2002 and 2008, its market share has increased from 1.8% to 2.6%.<sup>7</sup>

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<sup>6</sup> Adams Liquor Handbook (2008/2009).

<sup>7</sup> Adams Liquor Handbook (2008/2009).

## *Rum Production in the VI*

Cruzan, now owned by Fortune Brands after acquisition from Pernod Ricard, is currently the only rum producer in the U.S. Virgin Islands.<sup>8</sup> Most of the rum produced in the Cruzan plant is exported to the U.S. mainland in bulk; the Cruzan branded rum is only a small percentage of total production. Bulk rum is sold to local and regional bottlers and rectifiers for sale under a variety of private label and regional brand names, and to certain other bottlers for use in prepared cocktails, liqueurs and drink mixes. Cruzan is the largest supplier of bulk rum to the U.S. market. By virtue of its smaller size and lower margins, the bulk market has proven unattractive to aggressive expansion by Bacardi and others and Cruzan maintains a market share of 85 to 90%. While tariff protection under the Caribbean Basin Initiative ("CBI") on high-end, branded rums has been eliminated, low value, bulk rum from the Caribbean continues to be protected. However, there are no guarantees that this segment will continue to benefit from preferential treatment. Over the long-term, increased trade liberalization is likely to intensify competition in the bulk rum market, especially from countries in South America, which have large indigenous sugar cane industries, inexpensive fuel, low wages, and substantial rum and alcohol production capacity.

We do not, however, anticipate a significant change in this competitive market structure. Cruzan has occupied a stable niche in the overall rum market for many years. Various US trade agreements, such as the CBI, have resulted in advantages for the Virgin Islands, and also for Puerto Rico, in exporting rum to the US. The fact that Cruzan is currently operating at less than 80% capacity and has a significant level of productive capacity in relation to the size of the bulk market renders new entry by small producers unattractive at present. The security of Cruzan's future place in the rum market is further enhanced by the fact that Virgin Islands Rum has name recognition, or "market cachet", which should help secure future demand.

Cruzan also enjoys certain cost advantages that will help it remain competitive. These include a molasses subsidy provided by the VI Government and a range of tax incentives currently in place. According to Cruzan the molasses subsidy represents a significant advantage to operating in the VI. It allows Cruzan to purchase molasses at prices competitive with the costs of its Caribbean competitors. Given the Government's continued need for Matching Fund Revenues, and the Government's long-standing commitment to the rum industry, the Legislature has consistently authorized the subsidy every year since 1967. Additionally, the Economic Development Commission ("EDC") extends a 90% income tax abatement benefit to Cruzan as a means of promoting economic growth. Cruzan was first granted this tax abatement in 1987. We assume these tax incentives will remain in place.

Another significant tax advantage stems from Cruzan's use of citrus byproducts. End products are taxed based on ingredients rather than on alcohol content. The use of fortified citrus wine instead of distilled spirits results in an excise tax saving.<sup>9</sup>

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<sup>8</sup> Pernod Ricard, the second largest spirit company in the world, became the owner of Cruzan VIRIL when it acquired Vin & Sprit from the Swedish government in 2008.

<sup>9</sup> Though two and one-half gallons of citrus are required to replace one gallon of spirits, its excise tax of \$1.57 per gallon compares favorably with the \$13.50 imposed on spirits.



## *Captain Morgan*

In 2009, Diageo began construction of a facility which will produce all the rum used in Captain Morgan branded products sold in the U.S. in the Virgin Islands, with a view to starting rum sales from the Virgin Islands to continental U.S. in 2012. The VI government agreed to provide a range of incentives to support such production, including tax incentives, molasses subsidy payments, marketing and production funds, and grant financing for the acquisition and construction of the new plant and warehouse facility. Diageo, in turn, has agreed to produce all of the rum used to manufacture Captain Morgan branded products sold in the U.S., in the new St Croix distillery for at least 30 years. Diageo's production of rum in the Virgin Islands will not only boost the VI's share of the U.S. rum market from 13% to more than 35%, it also will help Diageo to continue positioning Captain Morgan into non-price sensitive premium segment.

### **Previous Revenue Forecasts**

#### **Forecast of April 1998**

In early 1998, in conjunction with the Public Finance Authority's \$541 million Revenue and Refunding Bonds, WEFA (now IHS Global Insight) produced a report verifying and projecting revenues from rum shipments to the US. We projected that Matching Fund Revenues would average from \$45.8 million to \$49.1 million from FY1998 to FY2003. These revenues assumed a cover-over rate of \$11.30. At a \$10.50 rate revenues were projected to average from \$43.1 to \$46.2 million.

At that time a conservative estimate of U.S. rum consumption was adopted. The available data at the time, through 1996, did not provide sufficient evidence of an end to the downward trend in consumption observed from 1985 through 1994. Consumption had increased in 1995 and 1996 in concert with a very strong U.S. economy. Econometric analysis suggested a continued strong negative trend was temporarily offset by strong income growth. *Adams* likewise projected growth of less than one half of one-percent for 1997.

At this time, however, the available data for 1997 through 2003 led us to revise the forecast. Econometric analysis with the new historical data, which reflects both the continued robust U.S. economic growth, and the increasing popularity in the U.S. of tropical drinks, suggests continued positive growth going forward as is discussed further herein.

#### **Forecast of November 2004**

In late 2004, Global Insight (now IHS Global Insight) produced a report verifying and projecting revenues from rum shipments to the United States, which updated the 1998 WEFA report. Data on rum consumption through 2003 had shown strong growth, averaging 6.8% per year over the previous five years. Our projections, at that time, had consumption growth slowing, to an average of 3.8% per year between 2004 and 2009. With data now available through 2008, IHS Global Insight growth projections in the 2004 forecast were low due to stronger than expected economic growth in the United States, which kept consumption rates at higher levels. For the three years of new data, average annual growth in consumption was 4.9%, while our projections showed growth of 3.7%.

### **Forecast of June 2009**

Earlier in 2009, IHS Global Insight produced a report verifying and projecting Matching Fund Revenues for both the Cruzan facility and the Diageo plant now under construction. During 2009 Fortune Brands has completed facility investments and increased production. As a result shipments during 2009 through June have significantly exceeded our previous projections. We have increased our 2009 projection for Cruzan rum accordingly. We also have incorporated more recent data and an updated US economic outlook. A lower US personal income forecast, has lowered our rum consumption forecast slightly, and therefore, our Diageo rum shipments projections. These slight declines are more than offset by the higher projected Cruzan rum shipments and, as a result, Matching Fund revenues are now expected to exceed our previous forecast.

## Model Development

### U.S. Rum Consumption

To forecast VI rum excise tax revenues, we first must forecast U.S. rum consumption. A demand- rather than a supply-based model is a more conservative approach for projecting future growth and relies on actual recent experience. Furthermore, since rum must actually be bottled in order to generate tax revenue for the VI, and no revenues are generated simply by sending shipments to the US, it is reasonable to link revenues as closely as possible to actual demand.

Using rum consumption data for the 1985 to 2008 period (see Table 5), we developed a regression model that projects U.S. rum consumption as a function of real personal income and a time trend. The time trend allows us to account for the rapid surge in popularity of rum consumption between 1995 and 2005.

**Table 5**  
**U.S. Consumption of Rum, 1985-2008**  
(9-Liter Cases)

Year	Rum Consumption	Growth Rate
1985	14,118,377	
1986	13,052,851	-7.5%
1987	13,450,740	3.0%
1988	13,334,940	-0.9%
1989	13,191,117	-1.1%
1990	13,564,115	2.8%
1991	12,324,756	-9.1%
1992	11,890,375	-3.5%
1993	11,927,692	0.3%
1994	11,712,877	-1.8%
1995	12,092,860	3.2%
1996	13,048,960	7.9%
1997	13,539,490	3.8%
1998	14,036,200	3.7%
1999	15,567,720	10.9%
2000	16,991,520	9.1%
2001	17,869,530	5.2%
2002	18,562,370	3.9%
2003	19,509,380	5.1%
2004	20,799,770	6.6%
2005	22,040,000	6.0%
2006	22,873,000	3.8%
2007	23,916,000	4.6%
2008	24,557,000	2.7%

Source: *Adams Media Liquor Handbook, 2008/2009.*

The model we developed using this consumption data has an R-square of 0.99, meaning that it explains 99% of the variation in rum consumption over the 1985 through 2008 time period. In terms of predictive ability, this R-square indicates a strong model with a high level of statistical significance. This regression model is expressed by the following equation<sup>10</sup>:

Log (U.S. Rum Consumption) =

$$0.94872 * \log(\text{Real U.S. Personal Income}_{t-1}) + 0.03359 * \text{trend} + 7.77238$$

The equation was adjusted using the Cochrane-Orcutt iterative method to correct for autocorrelation, a statistical relation that would otherwise bias coefficient estimates in this case.

Rum consumption was found, as expected, to be positively correlated with income in the previous year. The coefficient of 0.94872 in the equation indicates its demand elasticity with respect to income. That is, a 1% increase in real income leads to a 0.95% increase in consumption. The positive coefficient on the trend variable implies that, sans real income growth, consumption would increase over time, by 0.03% per year.

Once this equation was developed, we used it to project consumption for the 2009 through 2038 time period. Our consumption projections and corresponding growth rates are included in Table 6 below. Graph 2 illustrates actual and projected U.S. rum consumption.

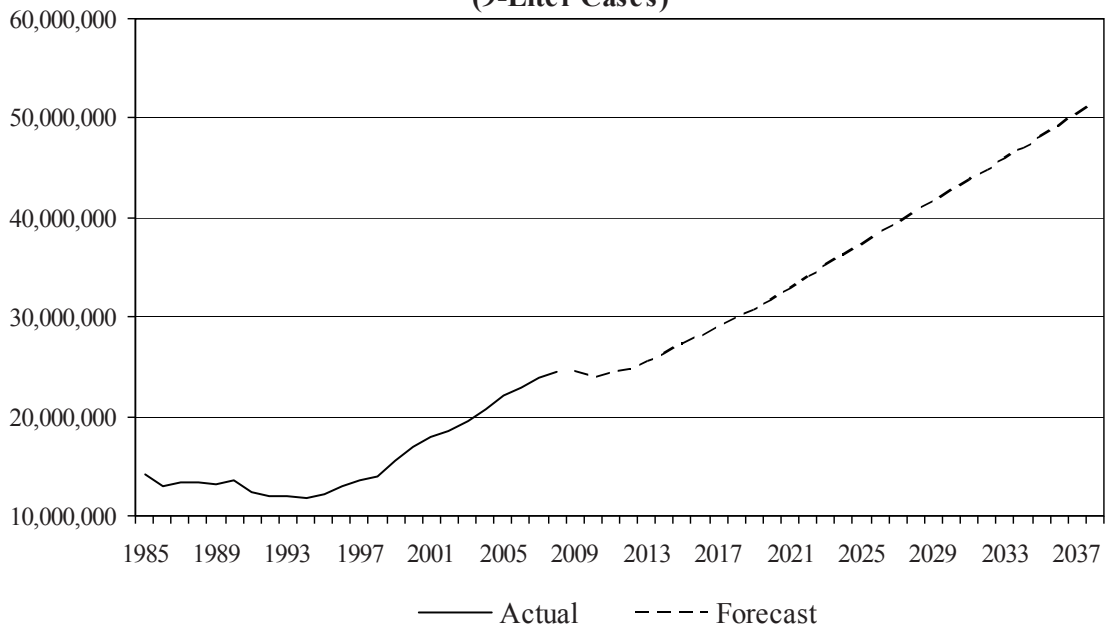
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<sup>10</sup> U.S. rum consumption is measured in 9-liter cases and U.S. real personal income is measured in billions of chained 2000 U.S. dollars.

**Table 6**  
**U.S. Consumption-Based Model**  
**Projected U.S. Rum Consumption, 2009-2038**  
(9-Liter Cases)

<b>Year</b>	<b>Projected Consumption</b>	<b>Growth Rate</b>
2009	24,457,702	-0.4%
2010	23,965,642	-2.0%
2011	24,234,420	1.1%
2012	24,730,781	2.0%
2013	25,530,702	3.2%
2014	26,337,752	3.2%
2015	27,190,962	3.2%
2016	28,019,853	3.0%
2017	28,884,757	3.1%
2018	29,758,689	3.0%
2019	30,677,058	3.1%
2020	31,693,212	3.3%
2021	32,863,118	3.7%
2022	34,025,891	3.5%
2023	35,150,808	3.3%
2024	36,224,449	3.1%
2025	37,273,004	2.9%
2026	38,344,293	2.9%
2027	39,425,623	2.8%
2028	40,504,436	2.7%
2029	41,578,211	2.7%
2030	42,649,100	2.6%
2031	43,744,840	2.6%
2032	44,781,384	2.4%
2033	45,827,308	2.3%
2034	46,891,848	2.3%
2035	48,005,456	2.4%
2036	49,153,544	2.4%
2037	50,331,065	2.4%
2038	51,558,469	2.4%

**Graph 2**  
**U.S. Rum Consumption**  
**(9-Liter Cases)**



Rum consumption is expected to decline in the near-term, a result of the current protracted US recession and expected slow recovery. Consumption will regain some momentum in 2011, and continue to accelerate through 2013, when growth will exceed 3%. Between 2009 and 2012 we expect rum consumption in the U.S. will grow at an average annual rate of 0.2%, reaching 24.7 million 9-liter cases. This is a more conservative projection than that of the 2008 Adams Liquor Handbook, which shows rum consumption growing 2.5% annually, to reach 27.1 million 9-liter cases by 2012.

**Base Projection: Constant Market Share**

*Assumptions*

Under our baseline forecast, we assume that Cruzan and Diageo will maintain a constant share of the U.S. rum market, until each plant reaches its production capacity. The underlying assumptions are the persistence of the tax incentives and subsidies provided by the VI and that both plants will remain in the Virgin Islands until 2038. It is also assumed that there will be no adverse impact on Cruzan production owing to the presence of the Diageo plant, and that the U.S. demand for Cruzan rum is unaffected by the location of Diageo production.

Using data for the first nine months of FY2009, we estimate that rum shipments from the VI to the US for the entire fiscal year will amount to 7.8 million proof gallons, up 9.6% from FY2008. Because our forecast calls for a moderate decline in US rum consumption during 2009, this implies that Cruzan bulk and branded rum will increase its share of US rum market from 15.3% in FY2008 to 16.8% in FY2009. Production at the VI Cruzan plant has been rising rapidly over the last two years due to increased

investment by Fortune Brands.<sup>11</sup> Under our baseline forecast, we assume that Cruzan will be able to maintain its current share of the U.S. market (16.8%) until the plant reaches capacity (10.5 million proof gallons) in FY2022. After reaching capacity, production at the plant will remain constant until FY2038.

Meanwhile, in 2008, Captain Morgan shipments by Diageo to the U.S. amounted to 12.16 million proof gallons, or 26.1% of U.S. rum consumption. We assume that Diageo will be able to maintain this share of the U.S. market until it reaches its capacity of 18 million proof gallons in FY2024. One important thing to note, however, is that in FY2012 shipments from the Diageo plant will be significantly less than capacity as the plant starts up. The plant is expected to come on stream at the end of 2010. It will produce throughout the 12 months of 2011, when it will distill approximately 13.3 million proof gallons of rum, all of which will be stored in a warehouse to mature for 12 months. After 12 months of maturation about 10% of the rum will evaporate and the remaining 12 million proof gallons will be blended into product for sale in 2012. Because the distilled product will be available for shipment only in the final three quarters of fiscal year 2012 (which runs from October 2011 to September 2012), we assume that shipments in this initial fiscal year will amount to just 9 million proof gallons.

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<sup>11</sup> In early 2009 Fortune Brands initiated a distillery expansion project, which increased the plant's production capacity from 8.9 million proof gallons per year, to 10.5 million proof gallons.

**Table 7**  
**Projected Shipments - Baseline Scenario, FY 2009-2038**

Fiscal Year	Projected Shipments		
	Cruzan	Captain Morgan	Total
2009	7,805,079		7,805,079
2010	7,648,050		7,648,050
2011	7,733,823		7,733,823
2012	7,892,225	9,000,000	16,892,225
2013	8,147,500	12,639,427	20,786,927
2014	8,405,051	13,038,972	21,444,022
2015	8,677,332	13,461,368	22,138,700
2016	8,941,852	13,871,725	22,813,578
2017	9,217,865	14,299,912	23,517,777
2018	9,496,759	14,732,567	24,229,326
2019	9,789,834	15,187,222	24,977,056
2020	10,114,115	15,690,287	25,804,402
2021	10,487,462	16,269,470	26,756,932
2022	10,500,000	16,845,121	27,345,121
2023	10,500,000	17,402,031	27,902,031
2024	10,500,000	18,000,000	28,500,000
2025	10,500,000	18,000,000	28,500,000
2026	10,500,000	18,000,000	28,500,000
2027	10,500,000	18,000,000	28,500,000
2028	10,500,000	18,000,000	28,500,000
2029	10,500,000	18,000,000	28,500,000
2030	10,500,000	18,000,000	28,500,000
2031	10,500,000	18,000,000	28,500,000
2032	10,500,000	18,000,000	28,500,000
2033	10,500,000	18,000,000	28,500,000
2034	10,500,000	18,000,000	28,500,000
2035	10,500,000	18,000,000	28,500,000
2036	10,500,000	18,000,000	28,500,000
2037	10,500,000	18,000,000	28,500,000
2038	10,500,000	18,000,000	28,500,000



*Revenue Projection*

Assuming that the current federal excise tax rate realized by the VI Government, \$13.25 per proof gallon, remains unchanged, we can calculate future revenues from Diageo and Cruzan rum, based on the shipment projections. These results are shown in Table 8 below.

**Table 8  
Projected Total Revenues (Dollars), FY 2009-2038**

Fiscal Year	Projected Revenues		
	Cruzan	Captain Morgan	Total
2009	\$103,417,292		\$103,417,292
2010	\$101,336,660		\$101,336,660
2011	\$102,473,161		\$102,473,161
2012	\$104,571,983	\$119,250,000	\$223,821,983
2013	\$107,954,379	\$167,472,407	\$275,426,786
2014	\$111,366,921	\$172,766,372	\$284,133,294
2015	\$114,974,645	\$178,363,127	\$293,337,771
2016	\$118,479,541	\$183,800,362	\$302,279,903
2017	\$122,136,714	\$189,473,828	\$311,610,542
2018	\$125,832,060	\$195,206,515	\$321,038,575
2019	\$129,715,304	\$201,230,691	\$330,945,996
2020	\$134,012,023	\$207,896,302	\$341,908,325
2021	\$138,958,871	\$215,570,474	\$354,529,344
2022	\$139,125,000	\$223,197,858	\$362,322,858
2023	\$139,125,000	\$230,576,914	\$369,701,914
2024	\$139,125,000	\$238,500,000	\$377,625,000
2025	\$139,125,000	\$238,500,000	\$377,625,000
2026	\$139,125,000	\$238,500,000	\$377,625,000
2027	\$139,125,000	\$238,500,000	\$377,625,000
2028	\$139,125,000	\$238,500,000	\$377,625,000
2029	\$139,125,000	\$238,500,000	\$377,625,000
2030	\$139,125,000	\$238,500,000	\$377,625,000
2031	\$139,125,000	\$238,500,000	\$377,625,000
2032	\$139,125,000	\$238,500,000	\$377,625,000
2033	\$139,125,000	\$238,500,000	\$377,625,000
2034	\$139,125,000	\$238,500,000	\$377,625,000
2035	\$139,125,000	\$238,500,000	\$377,625,000
2036	\$139,125,000	\$238,500,000	\$377,625,000
2037	\$139,125,000	\$238,500,000	\$377,625,000
2038	\$139,125,000	\$238,500,000	\$377,625,000
<b>Total</b>	<b>\$3,880,354,555</b>	<b>\$5,862,304,851</b>	<b>\$9,742,659,405</b>

### Alternative Projection: Growing Market Share

In addition to our demand-based model, we produced an alternative, more optimistic forecast in which both Cruzan and Diageo increases their share of the U.S. rum market.

Under this scenario, we use the Total Revenue figures in TTB (OMB) reports to project future Matching Fund Revenues from Cruzan's bulk rum shipments. Future earnings are expressed as a function of U.S. real personal income as follows:<sup>12</sup>

Total Matching Fund Revenue =

$$0.00960 * \text{Real Personal Income} + 5.53107 * \text{Step (1995)} + 13.8193 * \text{Step (2008)} - 35.8987$$

The model has an R-square 0.99, meaning that it explains 99% of the variation in Matching Fund revenues for the period between 1988 and 2008. A first order moving average term was included to capture the short-term dynamics of revenues.

Projected revenues from Cruzan's bulk rum shipments are shown in Table 9. As in the Baseline Projection the U.S. recession will result in sluggish income growth and more moderate growth in shipments over the near term. Still, the projected revenues imply that Cruzan's market share of U.S. rum consumption will continue to increase steadily, reaching a peak of 18.6% in FY2018. In FY2018 the plant will reach its production capacity of 10.5 million proof gallons per year. As a result, revenues from Cruzan shipments are expected to remain constant between fiscal year 2018 and 2038. An increasing future VI market share is supported by the assumption that Cruzan's marketing efforts, which have been aimed at attracting "high-end" consumers, continue to be successful. It should be noted that part of the increase in Cruzan's market share of U.S. consumption is associated with Todhunter's 1994 acquisition of VIRIL and the subsequent expansion of Cruzan's production facilities.<sup>13</sup>

To project revenues from Diageo rum under this scenario, we first project Captain Morgan shipments using historical data for 1991-2008 from the Adam's Liquor Handbook. Captain Morgan shipments are expressed as a function of U.S. rum consumption. Captain Morgan has been steadily increasing its share of the U.S. market. This model, which is expressed by the following equation, captures this trend.

Log (Captain Morgan) =

$$1.72167 * \log(\text{U.S. Rum Consumption}) - 13.5066$$

The equation was adjusted using the Cochrane-Orcutt iterative method to correct for autocorrelation and has an R-square 0.99. The coefficient of 1.72167 in the equation indicates a 1% increase in U.S. rum consumption leads to a 1.72% increase in Captain Morgan shipments. This means that Captain Morgan's share of the U.S. rum market will increase from its current 26.1% to a peak of 30.6% in FY2019. In FY2020, the Diageo plant will reach capacity and will continue to produce 18 million proof gallons each year until FY2038. Again, as in the baseline forecast, during FY 2012, shipments of rum from the VI plant will be limited to 9 million proof gallons due to production constraints.

From the projected shipments we calculate future Matching Fund Revenues from Diageo using the \$13.25 cover over rate. These results are shown in Table 9.

<sup>12</sup> In the equation Step (1995) is a dummy variable that represents Todhunter's acquisition. Step (2008) is also a dummy variable, and reflects the recent investments made to expand production at the VI plant.

<sup>13</sup> Note that this alternative model, like the consumption-based model also assumes that Cruzan will be able to maintain its current level of production, and will maintain its production facilities in the VI.

**Table 9**  
**Alternative Revenue-Based Model**  
**Projected Total Revenues (Dollars), FY 2009 – 2038**

Fiscal Year	Projected Revenues		
	Cruzan	Captain Morgan	Total
2009	\$103,417,292		\$103,417,292
2010	\$104,867,798		\$104,867,798
2011	\$107,548,783		\$107,548,783
2012	\$111,875,475	\$119,250,000	\$231,125,475
2013	\$116,248,163	\$172,238,592	\$288,486,755
2014	\$120,878,827	\$181,719,072	\$302,597,899
2015	\$125,385,038	\$191,972,294	\$317,357,332
2016	\$130,094,716	\$202,158,208	\$332,252,924
2017	\$134,861,303	\$213,020,988	\$347,882,291
2018	\$139,125,000	\$224,238,191	\$363,363,191
2019	\$139,125,000	\$236,284,649	\$375,409,649
2020	\$139,125,000	\$238,500,000	\$377,625,000
2021	\$139,125,000	\$238,500,000	\$377,625,000
2022	\$139,125,000	\$238,500,000	\$377,625,000
2023	\$139,125,000	\$238,500,000	\$377,625,000
2024	\$139,125,000	\$238,500,000	\$377,625,000
2025	\$139,125,000	\$238,500,000	\$377,625,000
2026	\$139,125,000	\$238,500,000	\$377,625,000
2027	\$139,125,000	\$238,500,000	\$377,625,000
2028	\$139,125,000	\$238,500,000	\$377,625,000
2029	\$139,125,000	\$238,500,000	\$377,625,000
2030	\$139,125,000	\$238,500,000	\$377,625,000
2031	\$139,125,000	\$238,500,000	\$377,625,000
2032	\$139,125,000	\$238,500,000	\$377,625,000
2033	\$139,125,000	\$238,500,000	\$377,625,000
2034	\$139,125,000	\$238,500,000	\$377,625,000
2035	\$139,125,000	\$238,500,000	\$377,625,000
2036	\$139,125,000	\$238,500,000	\$377,625,000
2037	\$139,125,000	\$238,500,000	\$377,625,000
2038	\$139,125,000	\$238,500,000	\$377,625,000
<b>Total</b>	<b>\$3,976,802,395</b>	<b>\$6,072,381,994</b>	<b>\$10,049,184,389</b>

**Alternative Projection: Lower Cover-Over Rate**

In fiscal year 2000, the cover-over rate for rum excise taxes paid to the Virgin Islands increased from \$10.50 to the current rate of \$13.25 per proof gallon. In this scenario, we calculate Matching Fund Revenues based on the shipment projections under our Baseline scenario, but assuming the cover-over rate reverts to \$10.50 over the forecast horizon. The results are shown in Table 10.

**Table 10**  
**Alternative 10.50 Cover-Over Rate Scenario**  
**Projected Total Revenues (Dollars), FY 2009 - 2038**

Fiscal Year	Projected Revenues		
	Cruzan	Captain Morgan	Total
2009	\$81,953,326		\$81,953,326
2010	\$80,304,523		\$80,304,523
2011	\$81,205,147		\$81,205,147
2012	\$82,868,364	\$94,500,000	\$177,368,364
2013	\$85,548,753	\$132,713,983	\$218,262,736
2014	\$88,253,032	\$136,909,201	\$225,162,233
2015	\$91,111,983	\$141,344,365	\$232,456,347
2016	\$93,889,447	\$145,653,117	\$239,542,565
2017	\$96,787,584	\$150,149,071	\$246,936,656
2018	\$99,715,972	\$154,691,955	\$254,407,928
2019	\$102,793,260	\$159,465,831	\$262,259,091
2020	\$106,198,207	\$164,748,013	\$270,946,220
2021	\$110,118,350	\$170,829,432	\$280,947,782
2022	\$110,250,000	\$176,873,774	\$287,123,774
2023	\$110,250,000	\$182,721,328	\$292,971,328
2024	\$110,250,000	\$189,000,000	\$299,250,000
2025	\$110,250,000	\$189,000,000	\$299,250,000
2026	\$110,250,000	\$189,000,000	\$299,250,000
2027	\$110,250,000	\$189,000,000	\$299,250,000
2028	\$110,250,000	\$189,000,000	\$299,250,000
2029	\$110,250,000	\$189,000,000	\$299,250,000
2030	\$110,250,000	\$189,000,000	\$299,250,000
2031	\$110,250,000	\$189,000,000	\$299,250,000
2032	\$110,250,000	\$189,000,000	\$299,250,000
2033	\$110,250,000	\$189,000,000	\$299,250,000
2034	\$110,250,000	\$189,000,000	\$299,250,000
2035	\$110,250,000	\$189,000,000	\$299,250,000
2036	\$110,250,000	\$189,000,000	\$299,250,000
2037	\$110,250,000	\$189,000,000	\$299,250,000
2038	\$110,250,000	\$189,000,000	\$299,250,000
<b>Total</b>	<b>\$3,074,997,949</b>	<b>\$4,645,600,070</b>	<b>\$7,720,598,019</b>

**Conclusion**

Our review of the records that document the Matching Fund Revenue collection and transfer process confirm that annual Matching Fund Revenues transferred to the VI during the FY 1992 through FY 2008 period were consistent with federal excise taxes collected from U.S. distillers on purchases of bulk VI rum and Customs Service duties levied on cased VI rum. The actual advances transferred to the Government are consistent with the projection and adjustment process as described by TTB and OMB.

Specifically, actual advances received in each year are reasonably close to the base advances for that year adjusted by the difference between projected and actual earnings for two FYs earlier. While there are years in the verification period when actual transfers did differ from the transfer that would be expected using this projection and adjustment calculation, these differences are relatively small, and are, on balance, immaterial.

IHS Global Insight's Constant Market Share Scenario, which forecasts Matching Fund Revenues as a function of U.S. rum consumption, projects that both the Cruzan and Captain Morgan plants will have reached production capacity by fiscal year 2024. As a result, from that year forward, Matching Fun Revenues will amount to \$378 million a year. Under an alternative, more optimistic scenario, the Growing Market Share Scenario, Matching Fund Revenues amount to \$378 million annually from fiscal 2020 on. In scenarios the current U.S. recession results in slow growth in rum consumption and shipments over the next few years. Finally, under the Lower Cover-Over Rate Scenario, Matching Fund Revenues reach a peak of \$299 million per year in fiscal year 2024.

All scenarios assume that Cruzan and Diageo will maintain its operations in the VI until fiscal 2038, and will be able to maintain production levels to meet future demand. IHS Global Insight found that, given the economic incentives provided to Cruzan by the Government for maintaining operations in the VI, it was reasonable to assume that they will maintain their operations in the VI. Similarly, Diageo will receive significant incentives to produce all its U.S. distribution of Captain Morgan rum in the new St Croix distillery for 30 years starting in 2012.

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**APPENDIX E**

**UNITED STATES VIRGIN ISLANDS**

## TABLE OF CONTENTS

	<b>Page</b>
ECONOMIC AND DEMOGRAPHIC INFORMATION .....	1
Geography, Landscape and Climate .....	1
Population .....	1
Per Capita Income .....	2
Employment .....	3
Tax Incentives Programs .....	6
(a) Economic Development Commission .....	6
(b) Section 934 Tax Incentives .....	7
(c) Tax Increment Financing .....	7
(d) Grant Financing .....	7
Transportation .....	8
Utilities and Energy .....	8
Tourism .....	9
(a) Visitor Arrivals .....	9
(b) Visitor Expenditures .....	12
Construction and Real Estate .....	12
GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS .....	16
General .....	16
Outstanding Indebtedness of the Government .....	17



## UNITED STATES VIRGIN ISLANDS

*The information in this Appendix was obtained from the Government of the Virgin Islands and has not been independently verified.*

### ECONOMIC AND DEMOGRAPHIC INFORMATION

#### **Geography, Landscape and Climate**

The United States Virgin Islands—also known as the U.S. Virgin Islands or more commonly as the Virgin Islands—is located some 1,600 miles southeast of New York City, about 1,075 miles from Miami, and 60 miles east of Puerto Rico. Approximately 70 small islands, islets and cays make up the Virgin Islands.

The principal islands are St. Croix, St. Thomas, St. John and Water Island. St. Croix, the largest of the four islands, has an area of 84 square miles and lies entirely in the Caribbean Sea. It is marked by undulating hills that rise gently to the north and lagoons that lie on the south coast. It has two main urban centers—Christiansted to the north and Frederiksted to the west—which both lie on a broad central plain. St. Thomas, which lies approximately 35 miles north of St. Croix, is 32 square miles in area. It is distinguished by a ridge of east-west hills that rise abruptly from the sea. It is marked by numerous sandy beaches along the shoreline, including Magens Bay, which is considered to be one of the finest beaches in the Caribbean. The main urban center, Charlotte Amalie, which also is the capital of the Virgin Islands, is surrounded by a protected deep water harbor. St. John is a 20- square mile area located approximately three miles east of St. Thomas. Its topography is similar to St. Thomas with steep, rugged hills and white-sandy beaches. About two-thirds of the island is preserved as the Virgin Islands National Park. Water Island is located approximately one-half mile from the harbor in Charlotte Amalie. In December 1996, Water Island was transferred to the Virgin Islands from the exclusive jurisdiction of the Department of Interior.

The Virgin Islands has temperatures ranging between 70°F and 90°F with an average of 78°F. Humidity is low and annual rainfall averages 40 inches. However, three hurricanes since 1989—Hugo, Marilyn and Bertha— caused considerable damage to all four islands.

#### **Population**

In 2008, the population of the Virgin Islands was estimated at 115,431, an increase of 0.6% from 2007, with 54,394 people on St. Thomas, 56,576 people on St. Croix and 4,461 people on St. John. The following table details the Virgin Islands and the United States population growth from 1950 through 2008.

**Table 1**  
**Comparative United States Virgin Islands**  
**and United States Population Growth**  
**1950-2008**

Year	United States Virgin Islands Population	Annual Percentage Increase (Decrease)	United States Population	Annual Percentage Increase (Decrease)
1950	26,665	-	152,271,417	-
1960	32,099	2.0%	180,671,158	1.9%
1970	62,468	9.5	205,052,174	1.3
1980	96,569	5.5	227,224,681	1.0
1990	101,809	0.5	249,464,396	1.0
1999	107,912	1.0	279,040,168	1.2
2000	108,612	0.6	282,177,754	1.1
2001	109,344	0.7	285,093,813	1.0
2002	110,026	0.6	287,973,924	1.0
2003	110,740	0.6	290,809,777	1.0
2004	111,459	0.6	293,655,404	1.0
2005	111,470	0.0	295,895,897	0.8
2006	113,689	2.0	298,754,819	1.0
2007	114,743	0.9	301,621,157	1.0
2008	115,431	0.6	304,059,724	0.8

Sources: U.S. Census Bureau and United States Virgin Islands Bureau of Economic Research.

### **Per Capita Income**

In 2008, per capita income of the Virgin Islands was \$20,381, an increase of approximately 3.0% from 2007. The per capita income in the United States in 2008 was \$39,751, an increase of approximately 2.9% from 2007. The following table sets forth the Virgin Islands per capita income from 1980 through 2008, and the United States per capita income from 1980 through 2008.

**Table 2**  
**Comparative Per Capita Income**  
**United States Virgin Islands and United States**  
**1980-2008**  
**(current dollars)**

Year	United States Virgin Islands	Annual Percentage Increase (Decrease)	United States	Annual Percent Increase (Decrease)
1980	6,230	-	10,183	-
1990	12,799	10.5%	19,572	9.2%
1999	16,242	2.8	27,843	3.5
2000	16,567	2.0	29,469	5.8
2001	16,898	2.0	30,271	2.7
2002	17,236	2.0	31,039	2.5
2003	17,581	2.0	31,632	2.4
2004	18,108	3.0	33,050	4.5
2005	18,652	3.0	34,586	4.6
2006	19,211	2.1	36,714	6.2
2007	19,787	3.0	38,615	5.2
2008	20,381	3.0	39,751	2.9

Sources: U.S. Bureau of Economic Analysis and United States Virgin Islands Bureau of Economic Research.

### **Employment**

Civilian employment in the Virgin Islands grew during the last five years. The improvement in the job market was largely a result of an increase in private sector jobs, particularly in construction and financial services. The Virgin Islands' unemployment rate decreased to 5.8% in 2008 from 5.9% in 2007. However, as a result of the global financial crisis, the unemployment rate in 2009 increased and as of July 30, 2009, the unemployment rate was 7.2%.

The unemployment rate rose to 9.4% in 2003, primarily as a result of the completion of construction of the coker plant by HOVENSA (described herein), which had employed approximately 2,000 construction workers. The following table sets forth the Virgin Islands labor and employment statistics and the Virgin Islands and the United States unemployment rates from 2001 through 2008.

**Table 3**  
**United States Virgin Islands Labor Force,**  
**Employment and Unemployment Rates and**  
**United States Unemployment Rates**  
**2001-2008**

<b>Year</b>	<b>Labor Force</b>	<b>Employment</b>	<b>Unemployment Rate United States Virgin Islands</b>	<b>Unemployment Rate United States</b>
2001	49,900	46,140	7.1%	4.7%
2002	49,457	44,980	8.7	5.8
2003	48,170	43,640	9.4	6.0
2004	50,066	46,295	7.8	5.5
2005	50,906	47,301	7.1	5.1
2006	50,794	48,640	6.2	4.6
2007	52,670	49,547	5.9	4.6
2008	52,710	49,677	5.8	5.8

Sources: United States Virgin Islands Department of Labor, Bureau of Labor Studies Reports, and the U.S. Department of Labor, Bureau of Labor Statistics.

About 73% of the jobs in the Virgin Islands are in the private sector. Private sector employment growth is fueled primarily by tourism and related services. The services sector experienced positive growth during 2007, and currently accounts for 29% of private employment. Wholesale and retail trade accounted for 21%, while construction, mining and manufacturing accounted for 17%.

Diageo USVI is currently constructing the Diageo Project, consisting of a distillery, a washwater treatment facility and warehouses on two parcels of land in Christiansted, St. Croix (See “DIAGEO - The Diageo Project.”). During construction, the Diageo Project is expected to require up to 200 workers at one time and during operations, the Diageo Project is expected to employ up to 70 workers.

Total public sector employment, which accounts for approximately 27% of jobs in the Virgin Islands, remained virtually flat during the last three years. In 2007, there were 12,698 public sector jobs compared to 12,460 in 2006. Federal and local governments are the largest employers in the public sector, with local government as the source of over 93% of all public sector jobs. The number of local government jobs was 12,015 in 2008, compared to 11,752 local government jobs in 2007. The number of United States federal government jobs was 957 in 2008, an increase of 1.2% from 946 jobs reported in 2007. Table 4 details the Virgin Islands annual wage and salary employment statistics from 2004 to 2008.

**Table 4**  
**Annual Wage and Salary Employment**  
**United States Virgin Islands**  
**2004-2008**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Private sector:					
Construction & mining .....	1,709	2,437	3,421	3,470	3,359
Manufacturing .....	2,084	2,244	2,322	2,318	2,307
Transportation, communication & public utilities .....	1,518	1,672	1,634	1,625	1,615
Wholesale & retail trade .....	6,886	6,901	6,930	7,013	7,102
Finance, insurance & real estate .....	2,517	2,606	2,568	2,459	2,376
Leisure and Hospitality .....	7,131	7,119	7,141	7,469	7,496
Information .....	893	890	825	803	792
Services (professional, business, education, health).....	8,890	9,034	9,274	9,400	9,522
<b>Total Private Sector .....</b>	<b><u>30,166</u></b>	<b><u>31,601</u></b>	<b><u>32,951</u></b>	<b><u>33,362</u></b>	<b><u>33,388</u></b>
<b>Government sector:</b>					
U.S. federal government .....	860	873	925	946	959
Territorial government .....	11,508	11,462	11,536	11,752	12,015
<b>Total Government Sector .....</b>	<b><u>12,368</u></b>	<b><u>12,335</u></b>	<b><u>12,461</u></b>	<b><u>12,698</u></b>	<b><u>12,973</u></b>
<b>Total .....</b>	<b><u>42,551</u></b>	<b><u>43,936</u></b>	<b><u>45,411</u></b>	<b><u>46,061</u></b>	<b><u>46,361</u></b>

Source: United States Virgin Islands Department of Labor, Bureau of Labor Statistics. Some figures may not add due to rounding. Nonagricultural wage and salary employment 2003 series have been converted from the 1987 Standard Classification (SIC) system to the North American Industry Classification System (NAICS).

Table 5 lists the ten largest private sector employers in the Virgin Islands as of December 2007. As of the date of this Official Statement, the list of the ten largest private sector employers in 2008 was not available.

**Table 5**  
**United States Virgin Islands**  
**Ten Largest Employers**  
**Private Sector**  
**(December 2007)**

<u>Name of Employer</u>	<u>Principal Business</u>
HOVENSA L.L.C	Oil Refinery
Turner St. Croix Maintenance	Maintenance
Ritz-Carlton Hotel VI Inc	Resort Hotel
Triangle Construction and Maintenance Corp.	Construction
Innovative Telephone Corporation	Utility
CBI Acquisition, LLC	Resort Hotel
Westin St. John Hotel, Inc.	Resort Hotel
Plaza Extra Supermarket, St. Croix	Grocery Store
K-Mart Corporation	Department Store
Frenchman's Reef Beach Resort	Resort Hotel

Source: United States Virgin Islands Department of Labor, Bureau of Labor Statistics.

## **Tax Incentives Programs**

### **(a) Economic Development Commission**

The Government offers various tax incentives that promote industrial and economic development in the Virgin Islands. The most notable incentive program was created by the Legislature in October 1975. The Economic Development Commission (the “Commission” or the “EDC”) was created to promote the growth, development and diversification of the economy of the Virgin Islands (the “Economic Development Program”). Qualifying businesses—corporations, partnerships or sole proprietorships—receive various benefits if they meet certain criteria set forth in the legislation. Gross Receipts Taxes are eligible for abatement by the Commission that could result in a reduction of Gross Receipts Taxes payable to the Government.

To qualify for tax incentives, investors must invest at least \$100,000, exclusive of inventory, in an eligible business and employ at least ten persons on a full-time basis. 80% of all employees must be residents of the Virgin Islands. Small, locally-owned businesses may receive EDC benefits for a minimum of five years or up to half the term of the regular program if they invest at least \$20,000 and have at least two full-time employees. A beneficiary receives a substantial reduction in, or an exemption from, all taxes imposed on businesses, including the Gross Receipts Taxes. Most importantly, the economic development legislation permits a 90% income tax reduction, resulting in a maximum tax rate of less than 4% on income for approved operations. Tax benefits also extend to passive income from certain qualifying investments, such as the Virgin Islands government obligations. The 90% reduction extends to dividends received by a beneficiary’s Virgin Islands resident shareholders.

As of June 30, 2009, 103 businesses actively conducted operations under the Economic Development Program. Applicants that are granted benefits are permitted to commence receiving benefits at some point during the first five years of operation of their enterprise. To date, 37 companies who previously were approved for benefits have not elected to commence benefits. The EDC has started a retention program to facilitate and support applicants in the activation process.

In 2004, Congress passed The American Jobs Creation Act of 2004 (“Jobs Act”), which placed new restrictions on the use of the tax incentives limiting activities which take place wholly within the Virgin Islands and requiring owners who become residents in the Virgin Islands to live in the Virgin Islands at least half of the year in order to enjoy the tax benefits. As a result of the changes brought about by the Jobs Act, the EDC has seen a reduction in the number of applications submitted for EDC benefits. Most of the reduction has been in applicants seeking benefits as Designated Services Companies, which are mainly financial services and consulting companies and which are required to have clients or customers outside of the Virgin Islands. In Fiscal Year 2009 to date, five Designated Services Companies closed operations as a result of the impact of the Jobs Act and one watch industry company closed as a result of foreign competition and customs restrictions. To date, a total of 32 beneficiaries have closed operations and 28 beneficiaries petitioned to the Board for consideration of waivers of employment and/or modifications to special conditions in order to maintain operations within the Virgin Islands. The EDC has not seen a material decline in the number of non-Designated Service Company applicants. As a result of the changes caused by the Jobs Act, the EDC has implemented a mitigation program to assist EDC beneficiaries who can document economic harm or loss.

To encourage self-compliance, the Commission provides an orientation to all beneficiaries, as part of which beneficiaries receive information on the performance of the terms of their contract with the Government, compliance with all applicable local and federal laws and regulations and the reporting requirements of the program. The Commission has in place compliance monitoring mechanisms, including an annual compliance conference. The Commission also assists beneficiaries in coordinating

with other government agencies responsible for administering provisions of the incentive program to ensure compliance with the program requirements. In cases of non-compliance, the Commission assesses fines and holds revocation and suspensions hearings which allow the Commission to revoke, suspend or modify benefits to require beneficiaries who have failed to comply with the conditions in its certificate to pay the amount of any and all benefits received under its certificate of benefits.

The EDC Program allows some qualifying investors to receive limited extensions or renewals of tax benefits, provided such investors fulfill certain criteria, including the ability to continue to promote economic development in the Virgin Islands. The Commission is currently trying to limit the number of extensions or renewals of benefits in favor of granting benefits to new businesses in growing industries such as financial services industries, tourism, marine and medical technology-based enterprises, which will further stimulate the economy of the Virgin Islands by providing positions for skilled labor and college educated personnel.

#### (b) Section 934 Tax Incentives

Pursuant to 26 U.S.C. § 934 (“Section 934 Tax Incentives”), the Government, through the EDC, may provide certain reductions in income tax liability incurred to the Virgin Islands. Such tax reductions are permitted for (i) income derived from sources within the Virgin Islands or income effectively connected with the conduct of a trade or business within the Virgin Islands, (ii) income tax liability paid by citizens or residents of the United States, and (iii) income derived by qualified foreign corporations from sources outside the United States and which is not effectively connected with the conduct of a trade or business within the United States.

Section 934 Tax Incentives may have the effect of reducing the amount of income tax paid to the Government. Such tax incentives, however, may increase the conduct of business that results in other economic benefits to the Virgin Islands.

#### (c) Tax Increment Financing

In June 2008, the Government of the Virgin Islands enacted the Tax Increment Financing (“TIF”) legislation as an additional economic development tool. In September 2008, the Economic Development Authority certified the Island Crossings Shopping Center (the “ICSC”) on St. Croix as the Virgin Islands’ first TIF area and authorized the issuance of up to \$30 million in tax-exempt bonds to finance a portion of the costs of a 43 acre mixed-use sustainable development project to be constructed on the ICSC site and anchored by a Home Depot. The tax-exempt bonds will be secured by the incremental increase in gross receipts and real property tax revenues generated at the ICSC site.

#### (d) Grant Financing

In order to expand the rum industry in the Virgin Islands, the Government entered into the thirty (30) year Diageo Agreement with Diageo USVI providing various incentives to Diageo USVI. Pursuant to the Diageo Agreement, Diageo USVI has agreed to develop rum production facilities on St. Croix, including a distillery, with the capacity to produce at least 18 million proof gallons of rum per year, together with the related washwater treatment site. In addition, on a separate site, Diageo USVI will construct warehouse facilities having 200,000 square feet of barrel warehouse capacity (the “Diageo Project”). Pursuant to the Diageo Agreement, Diageo USVI agreed to build and operate on St. Croix a distillery for production and a warehouse for the storage of bulk rum used in the production of Captain Morgan branded products in St. Croix in return for certain economic development incentives from the Government. In exchange for such incentives, in addition to agreeing to develop the Diageo Project, Diageo USVI agreed (i) that on or about January 1, 2012 or earlier if so decided by Diageo USVI, all

bulk rum used in the production of Captain Morgan branded products sold in the United States will be produced at the Diageo distillery, (ii) to minimum rum production thresholds starting at 1.5 million proof gallons in Fiscal Year 2012, and (iii) to certain liquidated damages payable to the Government in the event there is a material default of Diageo USVI's obligation to meet certain rum production thresholds within the timeframes set forth in the Diageo Agreement.

### **Transportation**

The Virgin Islands are accessible by air from around the world. Approximately 80 flights per week during the off-tourist season and 90 flights per week during the peak tourist season travel between the Virgin Islands and the United States mainland on six major airlines.

The Cyril E. King Airport Terminal on St. Thomas was completed and opened in October 1990. The expansion of the runway to 7,000 feet was completed and placed into service in December 1992. Major renovation and expansion of the Henry E. Rohlsen Airport Terminal on St. Croix was completed in January 2002. The renovation doubled the terminal's existing square footage to 181,000 square feet and expanded the runway to 10,000 feet.

Inter-island transportation between St. Thomas and St. Croix is provided by seaplane and regular ferry service. The island of St. John can be reached by regular airplane, seaplane and ferry service. Inter-island ferry service also provides passenger service between St. Thomas and the nearby British Virgin Islands several times a day. The Virgin Islands' internal transportation needs are served by a large number of taxis, taxivans, open-air buses, the public transit system (VITRAN) and rental cars.

### **Utilities and Energy**

The Virgin Islands Water and Power Authority ("WAPA"), an instrumentality of the Government, owns and operates electric power generation and distribution facilities on St. Thomas and St. Croix and currently is the sole provider of electricity in the Virgin Islands with the exception of a limited number of commercial entities that produce electricity for their own use. WAPA provides electricity to approximately 50,000 customers. WAPA also operates a water production and distribution system and provides water service to approximately 10,000 customers. Gas is available from various companies throughout the Virgin Islands.

On August 10, 2009, the Virgin Islands Water and Power Authority ("WAPA") and the Virgin Islands Waste Management Authority ("WMA") entered into contracts with affiliates of Colorado-based Alpine Energy Group, LLC (the "Company"), for the implementation of two waste to energy projects, one each on St. Croix and St. Thomas. Each waste to energy project will consist of two contracts, one with WMA for the design, construction and operation of an RDF facility and one with WAPA for the design, construction and operation of a power production facility. Both projects will be financed and owned by the affiliates of the Company. Pursuant to the contracts with WMA, the Company will be required to accept up to 73,000 tons per day of acceptable waste generated on each island. The acceptable waste will be processed and turned into refuse derived fuel ("RDF"), which, together with pet coke, will be utilized at the power production facilities as fuel for the generation of electricity. WMA will be required to pay an annual service fee to the Company for solid waste management services. Pursuant to the terms of the WAPA contracts, WAPA will purchase power generated by the power generation facilities. On St. Thomas, the power production facility is anticipated to generate approximately 32 MW of electricity. On St. Croix, the power production facility is anticipated to produce approximately 16 MW of electricity. In addition, the Company will be responsible for the disposal of the ash residue. Each contract will have a 20 year term with a 5-year renewal option by the authorities at the end of the term.



The terms of the contracts do not begin until all permits and financing have been received by the Company.

## **Tourism**

Tourism is the Virgin Islands' largest industry and represents the largest business segment in the private sector.

### **(e) Visitor Arrivals**

In 2008, the Virgin Islands recorded 2.435 million visitor arrivals, which represents a decrease of 6.7% from 2.611 million visitor arrivals recorded in 2007. After a decrease in tourism in 2001 and 2002, following the terrorist attacks in the United States involving the hijacking of airplanes and crashing them into the World Trade Center in New York City and a remote area of Pennsylvania on September 11, 2001, the performance in the tourism sector during the last five years has been uneven and it worsened by the global economic crisis that commenced in 2008 and continues to negatively affect visitor arrivals to the Virgin Islands. In 2009 the Virgin Islands continues to experience a decrease in total visitor arrivals with year to date figures as of August 31 of 1,532,304. Total visitor arrivals in 2008 decreased by 6.7% from 2007. Cruise passenger arrivals in St. Thomas and St. John decreased by 8.5% as compared to 2007. The number of cruise ship arrivals on St. Croix decreased from 6 in 2007 to 2 in 2008. The removal of St. Croix from the itineraries of Carnival and Royal Caribbean cruise lines in 2008 accounted for the 66.7% decrease in the number of cruise passengers arriving on St. Croix between those two years. In 2008, air visitors to St. Thomas and St. John increased by 6.2% as compared to 2004.

Starting in 2009, 48 cruise ships are scheduled to arrive on St. Croix, including Azamara Cruiselines, Celebrity Cruiselines and Holland America. The scheduled cruise ship arrivals are expected to bring approximately 121,768 visitors to St. Croix in 2009. Table 7 details visitor arrivals in the Virgin Islands from 2004 to 2008.

**Table 7**  
**United States Virgin Islands**  
**Visitor Arrivals**  
**2004-2008**  
**(000's)**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<b>St. Thomas/St. John:</b>					
Air Visitors	524.2	544.8	535.5	561.3	556.9
Cruise Passengers	1,960.9	1,910.2	1,901.3	1,917.4	1,754.6
Total Visitors	<u>2,485.1</u>	<u>2,455.0</u>	<u>2,436.8</u>	<u>2,478.7</u>	<u>2,311.5</u>
Number of Cruise Ship Visits*	922	814	776	750	685
<b>St. Croix:</b>					
Air Visitors	130.8	144.5	135.3	132.1	121.9
Cruise Passengers	25.0	54.5	35.2	7.1	2.5
Total Visitors	<u>155.8</u>	<u>204.1</u>	<u>170.5</u>	<u>139.2</u>	<u>124.4</u>
Number of Cruise Ship Visits*	11	48	25	6	2
<b>Total U.S. Virgin Islands:</b>					
Air Visitors	655.0	689.4	670.7	693.4	678.9
Cruise Passengers	1,964.7	1,912.5	1,903.5	1,917.9	1,757.0
Total Visitors	<u>2,619.7</u>	<u>2,601.9</u>	<u>2,574.2</u>	<u>2,611.3</u>	<u>2,435.9</u>
Number of Cruise Ship Visits*	924	818	782	752	687

\* Actual, not thousands. Totals by island include first and second port of entry arrivals. Total arrivals for the Virgin Islands include first territorial port of entry only; passengers visiting more than one U.S. Virgin Island during the same cruise are only counted once in the Virgin Islands total. Consequently, the Virgin Islands total will always be less than or equal to the sum of the two island totals as indicated.

Source: United States Virgin Islands Bureau of Economic Research.

## Hotel and Condominium Occupancy

Hotel occupancy decreased to 60.0% in 2008, from 64.6% in 2007. The number of hotel and condominium rooms decreased slightly to 1,075 in 2008, compared to 1,079 in 2007. Preliminary estimates for hotel occupancy in 2009, as of July 30, was 56.5%. Table 8 sets forth the statistics for hotel and other tourist accommodations from 2004 to 2008.

**Table 8**  
**United States Virgin Islands**  
**Hotel and Other Tourist Accommodations**  
**2004-2008**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<b>St. Thomas/St. John:</b>					
Total rooms/units	3,787	3,612	3,650	3,580	3,669
Number of hotels	31	30	30	29	30
Hotel rooms	3,034	2,830	2,862	2,775	2,872
Condominium/other units	753	782	788	805	797
Occupancy rate (percent)	65.2	66.1	63.0	68.0	68.0
<b>St. Croix:</b>					
Total rooms/units	1,172	1,149	1,162	1,177	1,187
Number of hotels	17	17	17	17	17
Hotel rooms	872	856	877	903	910
Condominium/other units	299	293	285	275	278
Occupancy rate (percent)	49.2	56.7	51.2	54.3	46.3
<b>Total U.S. Virgin Islands:</b>					
Total rooms/units	4,959	4,761	4,812	4,757	4,857
Number of hotels	48	47	47	46	47
Hotel rooms	3,906	3,687	3,739	3,678	3,782
Condominium/other units	1,053	1,075	1,073	1,079	1,075
Occupancy rate (percent)	61.3	63.8	60.1	64.6	60.0

Source: United States Virgin Islands Bureau of Economic Research.

## (f) Visitor Expenditures

Total expenditures by all visitors (tourists, cruise passengers and other excursionists) to the Virgin Islands totaled \$1,433.0 billion in 2007, a decrease of 2.2% from 2006. Table 9 details visitor expenditures in the Virgin Islands from 2004 to 2007. As of the date of this Official Statement, the visitor expenditures data for 2008 was not available.

**Table 9**  
**United States Virgin Islands**  
**Visitor Expenditures**  
**2004-2007**  
**(in millions)**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Tourists	\$789.8	\$863.8	\$881.0	\$829.4
Excursionists:				
Day-trip by air	27.6	28.0	26.7	49.2
Cruise passengers	<u>538.6</u>	<u>599.2</u>	<u>558.0</u>	<u>554.3</u>
Total	<u>566.2</u>	<u>629.2</u>	<u>584.7</u>	<u>603.5</u>
<b>Total Expenditures</b>	<b><u>\$1,356.0</u></b>	<b><u>\$1,493.0</u></b>	<b><u>\$1,465.7</u></b>	<b><u>\$1,433.0</u></b>

Source: United States Virgin Islands Bureau of Economic Research.

The Virgin Islands benefits from a \$1,600 duty-free exemption for articles purchased in the Virgin Islands and either mailed or taken back to the United States mainland once each 30 days without regard to the length of stay abroad, while other countries in the Caribbean basin only have a \$800 duty-free exemption (a two-to-one advantage). In addition, each adult is permitted to take up to 1.2 gallons of duty-free liquor as compared to one quart from other areas. In response to falling U.S. tariff rates and increased competition from Caribbean neighbors, local customs duties and excise taxes were removed from selected tourist-oriented merchandise in 1982. As a result, prices of various luxury items, such as jewelry, china, cameras, leather goods, perfumes, watches and clocks, can be significantly below average United States mainland prices.

### **Construction and Real Estate**

From 2007 to 2008, the total value of approved building construction permits for all of the Virgin Islands, an indicator of current and future industry activity, increased by 2.7%, primarily due to an increase in the value of private residential construction permits.

The construction sector averaged 3,426 jobs in Fiscal Year 2008, compared to 3,591 jobs during Fiscal Year 2007. Construction jobs declined 4.6% in Fiscal Year 2008 and by 8.0% in the first quarter of Fiscal Year 2009. Construction activity is expected to increase as a result of private construction activities in hotel development, road construction, seaport expansion, public and private-sector housing development and retail and commercial office space. For example, the new rum distillery and storage facility for Captain Morgan's rum to be constructed on St. Croix by Diageo USVI Inc. is expected to open in the third quarter of Fiscal Year 2010.

From 2007 to 2008, private residential construction increased by 23.0% on St. Thomas and St. John and by 7.3% on St. Croix, and private non-residential construction decreased by 45.6% on St. Thomas and St. John and by 54.2% on St. Croix. The following two tables detail the value of construction permits and the residential real estate market sales in the Virgin Islands from 2004 to 2008.

**Table 10**  
**United States Virgin Islands**  
**Value of Construction Permits**  
**2004-2008**

<b>Year</b>	<b>Total USVI (millions)</b>	<b>Percent Increase (Decrease)</b>	<b>St. Thomas/ St. John (millions)</b>	<b>Percent Increase (Decrease)</b>	<b>St. Croix (millions)</b>	<b>Percent Increase (Decrease)</b>
2004	339.4	32.8	210.2	20.3	129.2	59.7
2005	390.2	15.0	274.3	30.4	115.9	(10.3)
2006	442.7	13.5	217.7	(20.6)	225.0	94.2
2007	266.0	(39.9)	172.6	(20.6)	93.1	(58.6)
2008	273.3	2.7	183.8	6.3	89.5	(3.9)

Source: United States Virgin Islands Bureau of Economic Research.

**Table 11**  
**United States Virgin Islands**  
**Residential Real Estate Market Sales Analysis**  
**2004-2008**

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
<b>St. Thomas/ St. John:</b>					
Number of Homes Sold .....	304	244	192	174	148
Average Home Sales Price (\$).....	509,879	649,655	684,742	782,938	560,006
No. of Condominium Sales.....	318	277	240	184	158
Average Condominium Sales Price (\$)	184,498	234,233	260,142	294,969	311,654
<b>St. Croix:</b>					
Number of Homes Sold .....	283	267	288	280	187
Average. Home Sales Price (\$).....	302,278	302,874	367,938	364,266	385,665
No. of Condominium Sales.....	233	261	239	114	108
Average Condominium Sales Price (\$)	120,440	151,361	166,081	246,346	218,382
<b>Total U.S. Virgin Islands:</b>					
Number of Homes Sold .....	587	511	480	454	335
Average Home Sales (\$).....	409,792	468,460	494,660	525,048	462,687
No. of Condominium Sales.....	551	538	479	298	266
Average Condominium Sales Price (\$)	157,410	194,029	213,210	279,368	273,784

Source: United States Virgin Islands Bureau of Economic Research.

The table below presents the 15 largest real property taxpayers in the United States Virgin Islands in 2005.

**Table 12**  
**15 Largest Real Property Taxpayers of the**  
**United States Virgin Islands**  
**2005**

Name	Assessment**	Taxes
HOVENSA	\$1,872,595,713	\$14,044,467*
Lockhart (Family)	82,151,814	499,129*
Topa Equities	61,061,603	472,058*
Hartman (Family)	41,159,948	280,937*
Palace Resorts	31,918,105	239,385*
Sunny Isles Shopping Center	18,783,548	148,126*
Cabrita Grand Estates	16,647,774	124,858*
Banco Popular de Puerto Rico	16,083,370	120,625*
Innovative Telephone	14,805,822	110,571*
Boschulte (Family)	16,328,874	95,333*
B&W Realty Investment, Ltd.	11,655,551	93,066*
St. Thomas Liquor Co.	12,092,584	92,744*
Isidore Paiewonsky	8,932,526	68,293*
VI Inns,Ltd./Circa 1675,LLP	7,582,354	60,167*
Ginn-LA Fund VI, LLC	10,066,536	46,887*
Total	\$2,221,866,122	\$16,496,654

\* Decrease in Real Property Taxes due to the granting of Farmland, Homestead, Veterans, Elderly, and Nonprofit Exemptions, or an increase in Sewer User's Fee.

\*\* Assessments are 100%.

Source: United States Virgin Islands Office of the Tax Assessor.

## GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

### General

Under the terms of the Revised Organic Act, the Virgin Islands is an unincorporated territory of the United States with separate executive, legislative and judicial branches of government. The legislative power of the Virgin Islands is vested in the Legislature, a unicameral, popularly elected body consisting of 15 members who serve two-year terms. The Legislature has jurisdiction over “all rightful subjects of legislation” not inconsistent with the laws of the United States made applicable to the Virgin Islands.

Executive power resides with a Governor and a Lieutenant Governor who are elected every four years. The Governor is responsible for execution of local laws, administration of all activities of the executive branch and appointment of department heads and other employees. The current Governor is the Honorable John P. deJongh, Jr., and the current Lieutenant Governor is the Honorable Gregory R. Francis, both of whom assumed office on January 1, 2007.

Judicial power is vested in the Supreme Court and the Superior Court of the Virgin Islands, each established by local law with jurisdiction over all local matters, and the District Court of the Virgin Islands, which has the jurisdiction of a District Court of the United States. The Supreme Court of the Virgin Islands has appellate jurisdiction over the Superior Court. The United States Court of Appeals for the Third Circuit has appellate jurisdiction over the District Court and its appellate division and the Supreme Court. The Supreme Court justices are appointed by the Governor and confirmed by the Legislature and serve for terms of ten years. The Superior Court judges are appointed by the Governor and confirmed by the Legislature and serve for terms of six years. The judges of the District Court of the Virgin Islands are appointed by the President of the United States with the advice and consent of the United States Senate and serve for ten years.

As an unincorporated territory of the United States, the Virgin Islands is subject to the plenary power of Congress to make rules and regulations with respect to the Virgin Islands. In addition, Congress has the power to legislate directly for a territory or to establish the government for such territory subject to congressional control.

Pursuant to the Insular Areas Act of 1982, the Office of Inspector General (“OIG”) of the Department of Interior performs the functions of government comptroller through audits of revenues and receipts and expenditure of funds and property of the Virgin Islands, as well as the other insular areas of Guam, American Samoa, and the Commonwealth of Northern Mariana Islands. In this role, the OIG has issued numerous audit reports in the past regarding the finances of the Virgin Islands.

Residents of the Virgin Islands have been citizens of the United States since 1917. However, apart from express Congressional grants of rights, such as the Bill of Rights in Section 1561 of the Revised Organic Act, residency in the Virgin Islands does not carry with it the full range of rights which accompany citizenship in any of the states. Residents of the Virgin Islands do not have the right to vote in national elections for the President and Vice President of the United States. The Virgin Islands has an elected, non-voting delegate to the United States House of Representatives. Pursuant to a rule of the United States House of Representatives, the delegate may vote in legislative committees and participate in floor debate but may not vote on the House floor.



## Outstanding Indebtedness of the Government

### General Obligation Debt

The Revised Organic Act restricts the principal amount of general obligation debt which the Government may issue to no greater than 10% of the aggregate assessed valuation of taxable real property in the Virgin Islands. As of September 30, 2009, the Government had approximately \$580.8 million of general obligation debt outstanding. Such amount is within the statutory debt limitation established under the Revised Organic Act.

### Outstanding Bonds and Similar Obligations

Outlined in Table 13 are the general obligation bonds or notes of the Government issued either by the Government or by the Authority on behalf of the Government, and the revenue obligations of the Government, outstanding as of September 30, 2009.

In addition to the obligations noted in Table 13, in April 2004 and in April 2007, the Authority, on behalf of the Government, issued Refinery Facilities Senior Secured Tax-Exempt Revenue Bonds (HOVENSA Refinery) (the “HOVENSA Bonds”) on behalf of HOVENSA for construction of a coker. The HOVENSA Bonds are solely secured by, and payable from, revenues of HOVENSA.

The Revenue and Refunding Bonds (Virgin Islands Matching Fund Loan Notes) 1998 Series A and E (the “1998 Bonds”), the Revenue Bonds (Federal Highway Reimbursement Anticipation Loan Note), Series 2002 (the “2002 Bonds”) and the Revenue Bonds, Series 2004A (Virgin Islands Matching Fund Loan Note) (the “2004A Bonds”) are each a special limited obligation of the Authority secured by revenues of the Authority received pursuant to various notes from the Government. The 1998 Bonds, the 2002 Bonds and the 2004A Bonds are special limited obligations of the Government and do not have recourse to the Gross Receipts Taxes or to any other revenues not pledged to debt service for such revenue bonds issued by the Authority. No recourse may be had for the payment of the 1998 Bonds, the 2002 Bonds, the 2004A Bonds or the HOVENSA Bonds against the general funds of the Authority, the Government’s general funds or the Gross Receipts Taxes that secure the Series 1999A Bonds, the Series 2003A Bonds, the Series 2006 Bonds, the 2008A Subordinate Lien Revenue Notes or any future Bonds issued under the Gross Receipts Taxes Indenture.

**Table 13**  
**Summary of Outstanding General Obligation Bonds or Notes**  
**As of September 30, 2009**

Issuer	Issue Description	Outstanding Amount	Security
United States Virgin Islands	General Obligation Bonds, 1999 Series A (the “General Obligation Bonds”)	\$600,000*	General obligation of the Government
Virgin Islands Public Finance Authority	Revenue Bonds, Series 1999A (Virgin Islands Gross Receipts Taxes Loan Note) (the “Series 1999A Bonds”)	\$93,925,000	Gross Receipts Taxes Loan Note payable by the Government and general obligation of the Government

**Table 13**  
**Summary of Outstanding General Obligation Bonds or Notes**  
**As of September 30, 2009**

<b>Issuer</b>	<b>Issue Description</b>	<b>Outstanding Amount</b>	<b>Security</b>
Virgin Islands Public Finance Authority	Revenue Bonds, Series 2003A (Virgin Islands Gross Receipts Taxes Loan Note) (the “Series 2003A Bonds”)	\$255,815,000	Gross Receipts Taxes Loan Note payable by the Government and general obligation of the Government
Virgin Islands Public Finance Authority	Revenue Bonds, Series 2006 (Virgin Islands Gross Receipts Taxes Loan Note) (the “Series 2006 Bonds”)	\$217,495,000	Gross Receipts Taxes Loan Note payable by the Government and general obligation of the Government
Virgin Islands Public Finance Authority	Subordinate Lien Revenue Notes, Series 2008A (Virgin Islands Gross Receipts Taxes Loan Note) (the “2008A Subordinate Lien Revenue Notes”)	\$5,005,655	Gross Receipts Taxes Loan Note payable by the Government and general obligation of the Government
Virgin Islands Public Finance Authority	Subordinate Lien Bond Anticipation Notes Series 2009A (Virgin Islands Gross Receipts Taxes Loan Notes) (the “2009A Subordinate Lien Revenue Notes”)	\$8,000,000	Gross Receipts Taxes Loan Note payable by the Government and general obligation of the Government
Virgin Islands Public Finance Authority	Subordinate Lien Bond Anticipation Notes Series 2009B (Virgin Islands Gross Receipts Taxes Loan Notes) (the “2009B Subordinate Lien Revenue Notes”)	\$100,000,000	Gross Receipts Taxes Loan Note payable by the Government and general obligation of the Government

**Summary of Outstanding Revenue Obligations**  
**As of September 30, 2009**

<b>Issuer</b>	<b>Issue Description</b>	<b>Outstanding Amount</b>	<b>Security</b>
Virgin Islands Public Finance Authority	Revenue and Refunding Bonds (Virgin Islands Matching Fund Loan Notes) 1998 Series A and E	\$395,505,000	Matching Fund Loan Notes payable by the Government
Virgin Islands Public Finance Authority	Revenue Bonds, Series 2004A (Virgin Islands Matching Fund Loan Note)	82,310,000	Matching Fund Loan Notes payable by the Government
Virgin Islands Public Finance Authority	Subordinated Revenue Bonds, Series 2009A (Virgin Islands Matching Fund Loan Note –Diageo Project)	250,000,000	Matching Fund Loan Notes payable by the Government

\* Source: United States Virgin Islands Department of Finance. The remaining figures in this table were provided by the Trustee.

**APPENDIX F**

**FORM OF CONTINUING DISCLOSURE CERTIFICATE OF THE AUTHORITY**

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## FORM OF CONTINUING DISCLOSURE CERTIFICATE OF THE AUTHORITY

This Continuing Disclosure Certificate (the “Disclosure Certificate”), dated October 8, 2009, is executed and delivered by the Virgin Islands Public Finance Authority (the “Authority”) in connection with the issuance of its \$458,840,000 Revenue and Refunding Bonds (Virgin Islands Matching Fund Loan Notes), Series 2009A-1 Bonds (Senior Lien/Capital Project/Tax Exempt), Revenue and Refunding Bonds (Virgin Islands Matching Fund Loan Notes), Series 2009A-2 (Senior Lien/Capital Projects/Federally Taxable), Series 2009B (Senior Lien/Refunding) and Revenue and Refunding Bonds (Virgin Islands Matching Fund Lien Notes), Series 2009C (Subordinate Lien/Refunding) (collectively, the “Series 2009 Bonds”). Capitalized terms used in this Certificate which are not otherwise defined herein shall have the respective meanings given to such terms in the Official Statement with respect to the Series 2009 Bonds, dated October 1, 2009 (the “Official Statement”).

### The Undertaking

- Purpose of this Disclosure Certificate. This Disclosure Certificate is being executed and delivered for the benefit of the holders of the Series 2009 Bonds and delivered in order to assist the underwriters of the Series 2009A Bonds (the “Underwriters”) in complying with the provisions of Section (b)(5)(i) of Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission (the “SEC”) under the Securities and Exchange Act of 1934, as the same may be amended from time to time.

- Disclosure. a) So long as the Series 2009 Bonds are outstanding, the Authority shall provide certain financial and operating information (“Continuing Disclosure”) to the Municipal Securities Rulemaking Board (“MSRB”) in accordance with the provisions of Section (b)(5)(i) of the Rule as follows:

- (i) within 270 days after the end of the Authority’s Fiscal Year, Annual Financial Information with respect to each Fiscal Year of the Authority, commencing with the Fiscal Year ending on or after September 30, 2010. “Annual Financial Information” means, collectively: (A) Audited Financial Statements for the Authority prepared in accordance with generally accepted accounting principles; (B) Audited Financial Statements of the Government prepared in accordance with generally accepted accounting principles, if available (or, in the event that such Audited Financial Statements of the Government are not available, in substitution therefore, unaudited financial statements of the Government); and (c) an update of the tabular information presented in the Official Statement under the headings “MATCHING FUND REVENUES” and “THE RUM INDUSTRY” and an update of the information under the heading “VIRGIN ISLANDS PUBLIC FINANCE AUTHORITY – Outstanding Indebtedness of the Authority”;

- (ii) the Authority shall provide, within forty-five (45) days of the end of each quarter of each Fiscal Year, quarterly summaries of the information provided by the Virgin Islands Bureau of Alcohol Control Board on rum shipments and excise taxes collected as reported by the Bureau of Alcohol, Tobacco and Firearms submitted to the United States Department of the Interior with respect to Matching Fund Revenues;

- (iii) During construction of the Diageo Project, the Authority shall provide, or cause to be provided by Diageo USVI, pursuant to the terms of the Diageo Project Implementation Agreement, within forty-five (45) days of the end of each quarter of each Fiscal Year, quarterly updates on the construction progress of the Diageo Project against the plans for completion of construction by November 2010;

(iv) Upon completion of the construction of the Diageo Project until the commencement of rum exportation from the Virgin Islands to the U.S. mainland, the Authority promptly shall provide, or cause to be provided by Diageo USVI; (i) confirmation that distillation of the rum at the Distillery has commenced as planned by November 2010; (ii) information with regard to any changes in the date for commencement of exportation of rum from the Virgin Islands to the U.S. mainland; and (iii) confirmation when exportation from the Virgin Islands begins, specifying the number of proof gallons of bulk rum initially exported and whether such quantities are consistent with the production plans set forth in the Diageo Agreement; and

(v) After the Diageo Project becomes fully operational, the Authority promptly shall provide, or cause to be provided by Diageo USVI, pursuant to the terms of the Diageo Project Implementation Agreement, information with respect to any material interruption of production that could materially impact the supply of rum used to manufacture Captain Morgan branded products to be sold in the U.S. and any material deviation from the production plans set forth in the Diageo Agreement.

(vi) With respect to the Cruzan Facility, the Authority promptly shall provide, or cause to be provided by Cruzan VIRIL, Ltd., information with respect to any material interruption of production that could materially impact the supply of rum products to be sold by Cruzan VIRIL, Ltd. in the U.S.

The descriptions contained in clause (a)(i)(C) above, constituting Annual Financial Information, are of general categories of financial information and operating data. When such descriptions include information that no longer can be generated because the operations to which it related have been materially changed or discontinued, a statement to that effect shall be provided in lieu of such information. Similarly, when the operating data described in clauses 2(a)(iii)-(v) can no longer be generated because the operations to which it related have been materially changed or discontinued, including in the event of termination of the Diageo Agreement, a statement to that effect shall be provided in lieu of such information.

(b) All or any portion of Annual Financial Information may be incorporated therein by cross reference to any other documents which are (i) available to the public on the MSRB Internet website (currently, [www.emma.msrb.org](http://www.emma.msrb.org)), or (ii) filed with the SEC.

(c) Unless otherwise required by the MSRB, all notices, documents and information provided to the MSRB shall be provided to the MSRB's Electronic Municipal Markets Access (EMMA) system, the current Internet Web address of which is [www.emma.msrb.org](http://www.emma.msrb.org).

(d) All notices, documents and information provided to the MSRB shall be provided in an electronic format as prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

(d) The Authority will provide in a timely manner to the MSRB notice specifying any failure of the Authority to provide the Continuing Disclosure by the date specified.

VIRGIN ISLANDS PUBLIC FINANCE  
AUTHORITY

Attest:

\_\_\_\_\_  
Debra E. Gottlieb  
Secretary

By: \_\_\_\_\_  
Name: Angel E. Dawson, Jr.,  
Title: Executive Director

ACKNOWLEDGED AND ACCEPTED BY:

Government of the Virgin Islands

By: \_\_\_\_\_  
Angel E. Dawson, Jr.,  
Commissioner of Finance

Diageo USVI, Inc., but solely with respect to the  
information to be provided in clauses 2(a)(iii)-(v)  
hereof

By: \_\_\_\_\_

Cruzan VIRIL, Ltd., but solely with respect to the  
information to be provided in clauses 2(a)(vi) hereof

By: \_\_\_\_\_

Date: October 8, 2009

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**APPENDIX G**  
**FORM OF PROPOSED OPINION OF**  
**BOND COUNSEL**

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## FORM OF OPINION OF BOND COUNSEL TO THE AUTHORITY

October \_\_, 2009

Virgin Islands Public Finance Authority  
St. Thomas, Virgin Islands

The Bank of New York Mellon Trust Company, N.A.  
Jacksonville, Florida

Ladies and Gentlemen:

We have examined a Record of Proceedings relating to the issuance of \$458,840,000 Revenue and Refunding Bonds (Virgin Islands Matching Fund Loan Notes) Series 2009A-1 (Senior Lien/Capital Projects/Tax-Exempt) (the "Series 2009A-1 Bonds"), Series 2009A-2 (Senior Lien/Capital Projects/Federally Taxable) (the "Series 2009A-2 Bonds", and together with the Series 2009A-1 Bonds, the "Series 2009A Bonds"), Series 2009B (Senior Lien/Refunding) (the "Series 2009B Bonds") and Series 2009C (Subordinate Lien/Refunding) ("Series 2009C Bonds", and together with the Series 2009A Bonds and the Series 2009B Bonds, the "Series 2009 Bonds") of the United States Virgin Islands Public Finance Authority (herein called the "Authority"), a body corporate and politic, constituting a public corporation and autonomous governmental instrumentality of the Government of the United States Virgin Islands (the "Government"), organized and existing under and pursuant to the Revised Organic Act of 1954, as amended (48 U.S.C. Section 1574 et seq.) (the "Revised Organic Act") and the Virgin Islands Public Finance Authority Act (Title 29, Chapter 15, of the Virgin Islands Code), as amended, 2009 V.I. Act 6227, 2009 V.I. Act 7081, as amended by 2009 V.I. Act 7095 (collectively, the "Act"), and Resolution No. 09-023, dated July 29, 2009, as amended by Resolution No. 09-027 dated September 11, 2009 and by Resolution No. 09-032 dated October 6, 2009 (collectively, the "Bond Resolution").

The Series 2009 Bonds are issued under and pursuant to the Revised Organic Act, the Act, the Bond Resolution, an Indenture of Trust, dated as of May 1, 1998 (the "Indenture of Trust"), as previously supplemented and amended, and as further supplemented by a Fourth Supplemental Indenture of Trust, dated as of October 1, 2009 (the "Fourth Supplemental Indenture" and, together with the Indenture of Trust, the "Indenture"), each by and between the Authority and The Bank of New York Mellon Trust Company, N.A., Jacksonville, Florida, as successor trustee (the "Trustee"). All terms not otherwise defined herein shall have the meanings set forth in the Indenture.

The Series 2009 Bonds shall be secured by the Indenture, which pledges and assigns to the Trustee a lien on and a security interest in the Trust Estate, subject to the provisions of the Indenture. Payment of the Series 2009C Bonds shall be subject and subordinate to the prior payment of the Series 2009A Bonds and the Series 2009B Bonds.

The proceeds of the Series 2009 Bonds are being loaned by the Authority to the Government pursuant to a Loan Agreement, dated as of October 1, 2009, by and among the Authority, the Government and the Trustee (the "Series 2009 Loan Agreement"), against delivery by the Government of its \$458,840,000 principal amount 2009 Matching Fund Loan Notes (the "Series 2009 Loan Notes").

The Series 2009 Bonds shall be dated, shall mature, shall be subject to redemption prior to maturity and shall have such other terms as set forth in the Indenture.

The proceeds of the Series 2009 Bonds will be used to (i) finance certain capital projects, (ii) refund certain outstanding bonds; (iii) fund the Series 2009A and Series 2009B Senior Lien Debt Service Reserve Subaccounts in an amount equal to the respective Senior Lien Debt Service Reserve Requirements; (iv) fund the Series 2009C Subordinate Lien Debt Service Reserve Subaccount in an amount equal to the Series 2009C Subordinate Lien Debt Service Reserve Requirement; and (v) pay certain costs of issuing the Series 2009 Bonds.

Pursuant to the Indenture, the Authority is authorized to issue Additional Bonds from time to time upon the terms and conditions therein set forth.

The Internal Revenue Code of 1986, as amended (the "Code"), establishes certain requirements that must be met subsequent to the issuance and delivery of the Series 2009 A-1 Bonds, the Series 2009B Bonds and the Series 2009C Bonds (collectively, the "Federally Tax-Exempt Bonds") in order that interest on the Federally Tax-Exempt Bonds will be and remain excluded from gross income for Federal income tax purposes pursuant to Section 103 of the Code. These requirements include, but are not limited to, requirements relating to the use and expenditure of gross proceeds of the Federally Tax-Exempt Bonds, yield and other restrictions on investments of gross proceeds, and the arbitrage rebate requirement that certain excess earnings on gross proceeds be rebated to the Federal government. Noncompliance with such requirements may cause interest on the Federally Tax-Exempt Bonds to become included in gross income for Federal income tax purposes retroactive to their issue date, irrespective of the date on which such noncompliance occurs or is discovered. The Authority has covenanted to comply with certain applicable requirements of the Code to assure the exclusion of interest on the Federally Tax-Exempt Bonds from gross income under Section 103 of the Code. In rendering the opinion in paragraph four hereof, we have assumed that the Authority will comply with the provisions and procedures set forth in the Arbitrage and Use of Proceeds Certificate.

We are of the opinion that:

1. The Authority is duly created and validly existing under the provisions of the Act and the Revised Organic Act.

2. The Indenture has been duly authorized, executed and delivered by the Authority and, assuming the due authorization, execution and delivery thereof by the Trustee, is valid and binding upon the Authority and enforceable in accordance with its terms. The Indenture creates the valid pledge which it purports to create of the Trust Estate, moneys, securities and funds held or set aside under the Indenture, subject only to the application thereof to the purposes and on the conditions permitted by the Indenture.

3. The Series 2009 Bonds are valid and binding special limited obligations of the Authority, enforceable in accordance with their terms and the terms of the Indenture and entitled to the benefits of the Indenture, the Revised Organic Act, and the Act, and the Series 2009 Bonds have been duly and validly authorized and issued in accordance with law (including the Act and the Revised Organic Act) and the Indenture.

4. Under existing statutes and court decisions, interest on the Federally Tax-Exempt Bonds is excluded from gross income for Federal income tax purposes pursuant to Section 103 of the Code and interest on the Federally Tax-Exempt Bonds is not treated as a preference item in calculating the alternative minimum taxable income imposed on individuals and corporations under the Code; interest

on the Series 2009A-1 Bonds is not included in the adjusted current earnings of corporations for purposes of calculating the alternative minimum tax. Interest on the Series 2009B Bonds and the Series 2009C Bonds, however, is included in the adjusted current earnings of certain corporations for purposes of calculating the alternative minimum tax imposed on such corporations.

5. Under existing statutes, interest on the Series 2009 Bonds is also exempt from any income tax imposed on individuals by the Government or any political subdivision thereof or by any state, territory or possession or by any political subdivisions thereof or by the District of Columbia pursuant to the Revised Organic Act and the Virgin Islands Code.

6. Interest on the Series 2009A-2 Bonds is included in gross income for Federal income tax purposes.

This opinion is issued as of the date hereof, and we assume no obligation to (i) update, revise or supplement this opinion to reflect any actions hereafter taken or not taken, or any facts or circumstances, or any changes in law or interpretations thereof, that may hereafter occur, or for any other reason whatsoever, (ii) notify you or any other person if the conditions stated in paragraph four above have not been met, or (iii) review any legal matters incident to the authorization, issuance, validity and tax exemption of the Series 2009 Bonds, or the purposes to which the proceeds thereof are to be applied, after the date hereof.

This opinion letter is rendered solely with regard to the matters expressly opined on above and does not consider or extend to any documents, agreements, representations or other material of any kind not specifically opined on above. It is understood that the rights of the holders of the Series 2009 Bonds under the Indenture and the enforceability thereof under the same may be subject to the exercise of judicial discretion, the sovereign police powers of the Virgin Islands and the constitutional powers of the United States of America, and to valid bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or remedies and are subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

We have examined one of each of the Series 2009A-1 Bonds, the Series 2009A-2 Bonds, the Series 2009B Bonds and the Series 2009C Bonds, as executed and, in our opinion, the form of said Series 2009 Bonds and their execution are regular and proper.

Very truly yours,

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**APPENDIX H**

**DTC BOOK-ENTRY ONLY SYSTEM**

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## DTC BOOK-ENTRY ONLY SYSTEM

**The description that follows of the procedures and record keeping with respect to beneficial ownership interests in the Series 2009 Bonds, payments of principal, premium, if any, and interest on the Series 2009 Bonds to DTC, its nominee, Participants, or Beneficial Owners, confirmation and transfer of beneficial ownership interests in the Series 2009 Bonds and other bond-related transactions by and between DTC, Participants and Beneficial Owners is based on information furnished by DTC.**

The Depository Trust Company, New York, New York (“DTC”) will act as securities depository for the Series 2009 Bonds. The Series 2009 Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2009 Bond will be issued for the Series 2009 Bonds in the aggregate principal amount of each maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-US. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U. S. securities brokers, and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of the Series 2009 Bonds under the DTC system must be made by or through Direct Participants, who will receive a credit for such Series 2009 Bonds on DTC’s records. The ownership interest of each actual purchaser of each Series 2009 Bond (the “Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2009 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2009 Bonds, except in the event that use of the book-entry system for the Series 2009 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2009 Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may

be requested by an authorized representative of DTC. The deposit of the Series 2009 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2009 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2009 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

So long as a book-entry system is used for determining beneficial ownership of the Series 2009 Bonds, the Trustee is to send redemption notice to DTC or to Cede & Co., as partnership nominee for DTC. Any failure of DTC to advise any Participant, or of any Direct Participant or Indirect Participant to notify the actual purchaser of each Series 2009 Bond, or any such notice of its content or effect does not affect the validity of the redemption of the Series 2009 Bonds called for redemption or any other action premised on that notice. In the event of a call for optional redemption, the Authority's notification to DTC initiates DTC's standard call; and if a partial call, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in the Series 2009 Bonds to be redeemed, and each such Participant then selects by lot the ownership interest in such Series 2009 Bonds to be redeemed. When DTC and its Participants allocate the call, the Beneficial Owners of the book-entry interests called are to be notified by the broker or other organization responsible for maintaining the records of those interests and subsequently credited by that organization with the process once the Series 2009 Bonds are redeemed.

THE TRUSTEE, AS LONG AS A BOOK-ENTRY ONLY SYSTEM IS USED FOR THE SERIES 2009 BONDS, WILL SEND ANY NOTICE OF REDEMPTION OR OTHER NOTICES ONLY TO DTC. ANY FAILURE OF DTC TO ADVISE ANY PARTICIPANT, OR OF ANY PARTICIPANT TO NOTIFY ANY BENEFICIAL OWNER OF ANY NOTICE AND OF ITS CONTENT OR EFFECT WILL NOT AFFECT THE VALIDITY OR SUFFICIENCY OF THE PROCEEDINGS RELATING TO THE REDEMPTION OF THE SERIES 2009 BONDS CALLED FOR REDEMPTION OR OF ANY OTHER ACTION PREMISED ON SUCH NOTICE.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2009 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2009 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and interest payments on the Series 2009 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Authority or the Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, or the Authority, subject to any statutory or regulatory requirement as may be in effect from time to time. Payment of principal and interest to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC, is the responsibility of the Authority or the Trustee, disbursement of

such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2009 Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, Series 2009 Bond certificates are required to be printed and delivered. The Authority may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Series 2009 Bond certificates will be printed and delivered.

So long as Cede & Co. is the registered owner of the Series 2009 Bonds, as partnership nominee for DTC, references herein to Bondholders or registered owners of the Series 2009 Bonds (other than under the captions “TAX MATTERS”, “FEDERALLY TAX EXEMPT BONDS AND “TAXABLE BONDS”) shall mean Cede & Co. and shall not mean the Beneficial Owners of the Series 2009 Bonds.

When reference is made to any action which is required or permitted to be taken by the Beneficial Owners, such reference shall only relate to those permitted to act (by statute, regulation or otherwise) on behalf of such Beneficial Owners for such purposes.

NEITHER THE AUTHORITY NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DTC PARTICIPANTS, TO INDIRECT PARTICIPANTS, OR TO ANY BENEFICIAL OWNER WITH RESPECT TO (i) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, CEDE & CO., ANY DTC PARTICIPANT, OR ANY INDIRECT PARTICIPANT; (ii) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE OWNERS OF THE SERIES 2009 BONDS; (iii) THE SELECTION BY DTC OR ANY DTC PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE SERIES 2009 BONDS; (iv) THE PAYMENT BY DTC OR ANY DTC PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR REDEMPTION PREMIUM, IF ANY, OR INTEREST DUE WITH RESPECT TO THE SERIES 2009 BONDS; (v) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNER OF THE SERIES 2009 BONDS; OR (vi) ANY OTHER MATTER.

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